

CHAPTER 139

CORPORATIONS AND ASSOCIATIONS

SENATE BILL 94-107

BY SENATORS Norton, Casey, Cassidy, Mutzebaugh, and Tebedo;
also REPRESENTATIVES Kaufman and Owen.

AN ACT

CONCERNING LIMITED LIABILITY COMPANIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 7-80-102 (3), (7), and (11), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 7-80-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

7-80-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Business" means ~~any trade, occupation, profession, or other commercial activity engaged in for gain, profit, or livelihood~~ ANY LAWFUL ACTIVITY, INCLUDING OWNERSHIP OF REAL OR PERSONAL PROPERTY, WHETHER OR NOT ENGAGED IN FOR PROFIT.

(6.5) "GENERAL PARTNER" MEANS A PARTNER IN A PARTNERSHIP AND A GENERAL PARTNER IN A LIMITED PARTNERSHIP.

(7) "Limited liability company" or "company" means a limited liability company organized and existing under this article. ~~and having two or more members.~~

(7.5) "LIMITED PARTNER" MEANS A LIMITED PARTNER IN A LIMITED PARTNERSHIP.

(7.6) "LIMITED PARTNERSHIP" MEANS A LIMITED PARTNERSHIP CREATED UNDER THE "COLORADO UNIFORM LIMITED PARTNERSHIP ACT OF 1981", ARTICLE 62 OF THIS TITLE, A PREDECESSOR LAW, OR A COMPARABLE LAW OF ANOTHER JURISDICTION.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(11) "Operating agreement" means any valid ~~written~~ agreement of the members as to the affairs of a limited liability company and the conduct of its business. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE OPERATING AGREEMENT NEED NOT BE IN WRITING. The operating agreement may contain any provisions ~~for the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with law or the articles of organization.~~ REQUIRED OR PERMITTED BY SECTION 7-80-108 (1).

(14) "PARTNER" MEANS BOTH A GENERAL PARTNER AND A LIMITED PARTNER.

(15) "PARTNERSHIP" MEANS A PARTNERSHIP AS DEFINED IN THE "UNIFORM PARTNERSHIP LAW", ARTICLE 60 OF THIS TITLE, A PREDECESSOR LAW, OR A COMPARABLE LAW OF ANOTHER JURISDICTION.

(16) "VERIFY", FOR PURPOSES OF PROVISIONS REQUIRING THAT AN INSTRUMENT BE VERIFIED, MEANS THAT EACH PERSON SIGNING THE INSTRUMENT THEREBY AFFIRMS OR ACKNOWLEDGES, UNDER PENALTIES OF PERJURY, THAT THE INSTRUMENT IS SUCH PERSON'S ACT AND DEED OR THE ACT AND DEED OF THE LIMITED LIABILITY COMPANY AND THAT, TO THE BEST OF SUCH PERSON'S KNOWLEDGE AND BELIEF, THE FACTS STATED IN THE INSTRUMENT ARE TRUE.

SECTION 2. 7-80-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-103. Nature of business. ~~A limited liability company may conduct any business that a partnership with limited partners may lawfully conduct and may not conduct any business that is prohibited by law to such partnership.~~ A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THIS ARTICLE FOR ANY LAWFUL BUSINESS, SUBJECT TO ANY PROVISIONS OF LAW GOVERNING OR REGULATING SUCH BUSINESS WITHIN THIS STATE.

SECTION 3. 7-80-104 (1) (d), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-104. Powers. (1) Each limited liability company organized and existing under this article may:

(d) Lend money to and otherwise assist its members and employees; ~~except as otherwise provided in the operating agreement;~~

SECTION 4. 7-80-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-107. Application of corporation case law to set aside limited liability. (1) In any case in which a party seeks to hold the members of a limited liability company personally responsible for the alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.

(2) FOR PURPOSES OF THIS SECTION, THE FAILURE OF A LIMITED LIABILITY

COMPANY TO OBSERVE THE FORMALITIES OR REQUIREMENTS RELATING TO THE MANAGEMENT OF ITS BUSINESS AND AFFAIRS IS NOT IN ITSELF A GROUND FOR IMPOSING PERSONAL LIABILITY ON THE MEMBERS FOR LIABILITIES OF THE LIMITED LIABILITY COMPANY.

SECTION 5. Part 1 of article 80 of title 7, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

7-80-108. Effect of operating agreement - nonwaivable provisions. (1) THE OPERATING AGREEMENT MAY CONTAIN ANY PROVISIONS FOR THE AFFAIRS OF THE LIMITED LIABILITY COMPANY AND THE CONDUCT OF ITS BUSINESS TO THE EXTENT SUCH PROVISIONS ARE CONSISTENT WITH LAW. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OR (3) OF THIS SECTION, AN OPERATING AGREEMENT GOVERNS THE RIGHTS, DUTIES, LIMITATIONS, QUALIFICATIONS, AND RELATIONS AMONG THE MANAGERS, THE MEMBERS, THE MEMBERS' ASSIGNEES AND TRANSFEREES, AND THE LIMITED LIABILITY COMPANY. SUCH PROVISIONS SHALL CONTROL OVER ANY PROVISION OF THIS ARTICLE TO THE CONTRARY EXCEPT AS SET FORTH IN SUBSECTION (2) OF THIS SECTION. TO THE EXTENT THE OPERATING AGREEMENT DOES NOT OTHERWISE PROVIDE, THIS ARTICLE SHALL CONTROL.

(2) AN OPERATING AGREEMENT MAY NOT:

(a) UNREASONABLY RESTRICT A MEMBER'S RIGHT OF ACCESS TO BOOKS AND RECORDS UNDER SECTION 7-80-411 OR 7-80-712;

(b) UNREASONABLY REDUCE THE DUTY OF CARE UNDER SECTION 7-80-406;

(c) ELIMINATE THE OBLIGATION TO PERFORM DUTIES IN GOOD FAITH UNDER SECTION 7-80-406; EXCEPT THAT THE MEMBERS BY AGREEMENT MAY DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THE OBLIGATION IS TO BE MEASURED, IF SUCH STANDARDS ARE NOT MANIFESTLY UNREASONABLE;

(d) VARY ANY FILING REQUIREMENT UNDER THIS ARTICLE; OR

(e) RESTRICT RIGHTS OF, OR IMPOSE DUTIES ON, PERSONS OTHER THAN THE MEMBERS, THEIR ASSIGNEES AND TRANSFEREES, AND THE LIMITED LIABILITY COMPANY WITHOUT THE CONSENT OF SUCH PERSONS.

(3) UNLESS CONTAINED IN A WRITTEN OPERATING AGREEMENT OR OTHER WRITING APPROVED IN ACCORDANCE WITH A WRITTEN OPERATING AGREEMENT, NO PROVISION OF AN OPERATING AGREEMENT MAY:

(a) VARY THE REQUIREMENT UNDER SECTION 7-80-702 (1) THAT, IF ALL OF THE OTHER MEMBERS OF THE LIMITED LIABILITY COMPANY OTHER THAN THE MEMBER PROPOSING TO DISPOSE OF THE MEMBER'S INTEREST DO NOT APPROVE OF THE PROPOSED TRANSFER OR ASSIGNMENT BY UNANIMOUS WRITTEN CONSENT, THE TRANSFEREE OF THE MEMBER'S INTEREST SHALL HAVE NO RIGHT TO PARTICIPATE IN THE MANAGEMENT OF THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY OR TO BECOME A MEMBER;

(b) VARY THE REQUIREMENT UNDER SECTION 7-80-801 (1) (c) THAT THE LIMITED

LIABILITY COMPANY DISSOLVE UPON THE DEATH, RETIREMENT, RESIGNATION, EXPULSION, BANKRUPTCY, OR DISSOLUTION OF A MEMBER OR THE 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 WITHIN NINETY DAYS AFTER THE TERMINATION;

(c) VARY THE REQUIREMENT UNDER SECTION 7-80-701 THAT, AFTER THE FILING OF A LIMITED LIABILITY COMPANY'S ORIGINAL ARTICLES OF ORGANIZATION, A PERSON MAY BE ADMITTED AS AN ADDITIONAL MEMBER UPON THE WRITTEN CONSENT OF ALL MEMBERS;

(d) VARY ANY REQUIREMENT UNDER THIS ARTICLE THAT A PARTICULAR ACTION OR PROVISION BE REFLECTED IN A WRITING.

SECTION 6. 7-80-203 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

~~**7-80-203. Formation.** (2) A limited liability company shall have two or more members at the time of its formation.~~

SECTION 7. 7-80-204 (1) (b), (1) (d), and (1) (e), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 7-80-204 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

7-80-204. Articles of organization. (1) The articles of organization shall set forth:

~~(b) The period of its duration, which may not exceed thirty years from the date of filing with the secretary of state;~~

~~(d) IF MANAGEMENT IS VESTED IN MANAGERS, the names and business addresses of the initial manager or managers; who are to serve as manager or managers until the first annual meeting of members or until their successors are elected and qualified;~~

~~(e) Any other provision, not inconsistent with law, which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which under this article are required or permitted to be set out in the operating agreement of the limited liability company. IF THE MANAGEMENT OF THE LIMITED LIABILITY COMPANY IS VESTED IN MANAGERS RATHER THAN MEMBERS, A STATEMENT TO THAT EFFECT; AND~~

~~(f) IF MANAGEMENT IS NOT VESTED IN MANAGERS RATHER THAN MEMBERS, THE NAMES AND BUSINESS ADDRESSES OF THE INITIAL MEMBER OR MEMBERS.~~

SECTION 8. 7-80-209 (1) (c), (1) (d), and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 7-80-209 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

7-80-209. Amendment of articles of organization. (1) The articles of

organization shall be amended when:

~~(c) There is a change in the time as stated in the articles of organization for the dissolution of the limited liability company;~~

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

(1.5) UNLESS OTHERWISE PROVIDED IN A WRITTEN OPERATING AGREEMENT, AN AMENDMENT TO THE ARTICLES OF ORGANIZATION IS INVALID UNLESS APPROVED BY WRITTEN CONSENT OF ALL MEMBERS.

(2) An amendment to the articles of organization of a limited liability company shall be in the form and manner designated by the secretary of state. The amendment shall be signed AND VERIFIED by a manager and may be signed on his behalf by an attorney-in-fact, duly authorized by a written power of attorney. Duplicate originals of the amendment shall be delivered to the secretary of state for filing accompanied by the requisite filing fee. ~~The execution of an amendment constitutes an affirmation under the penalties of perjury that the facts stated therein are true.~~

SECTION 9. 7-80-305 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-305. Failure to pay fees and file appropriate reports - suspended limited liability companies. (3) If the members' meetings have been regularly called and due notice has been given to the members, as required by law, of any such suspended limited liability company and a quorum is not present at any members' meeting, an election of managers may be held ~~pursuant to the provisions of the operating agreement or, if the operating agreement does not so provide,~~ by a majority vote of the members present and entitled to vote at such meeting, if not less than thirty percent of all members entitled to vote for the election of such managers is present at said meeting in person or by written proxy.

SECTION 10. 7-80-401, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-401. Management of limited liability company. (1) ~~Except as provided in this article, management of the limited liability company's business and affairs shall be vested in~~ IF THE ARTICLES OF ORGANIZATION VEST MANAGEMENT IN A manager or managers:

(a) The articles of organization or the operating agreement of the limited liability company may apportion management responsibility or voting power among the several managers, if there are two or more, in any manner or upon any basis not inconsistent with this article.

~~(2)~~ (b) THE MANAGER OR managers, ~~shall be~~ IF THEY ARE natural persons, SHALL BE eighteen years of age or older but need not be residents of this state or members of the limited liability company unless the articles of organization or the operating agreement so requires. The articles of organization or the operating agreement may prescribe other qualifications for managers. Nothing in this article shall prohibit

members who are natural persons eighteen years of age or older OR OTHER PERSONS from serving as managers. ~~if they are so elected pursuant to section 7-80-402.~~

(2) ~~IF MANAGEMENT IS RESERVED TO THE MEMBERS, MANAGEMENT OF THE LIMITED LIABILITY COMPANY'S BUSINESS AND AFFAIRS SHALL BE VESTED IN THE MEMBERS, AND ANY REFERENCE IN THIS ARTICLE TO MANAGERS SHALL BE DEEMED TO REFER TO MEMBERS.~~

SECTION 11. 7-80-402 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-402. Election and term of managers. (1) ~~The number of managers shall be fixed by or in the manner provided in the articles of organization or the operating agreement, except as to the number constituting the initial manager or group of managers which number shall be fixed by the articles of organization. The number of managers may be increased or decreased, by amendment to or in the manner provided in the articles of organization or the operating agreement, but no decrease shall have the effect of shortening the term of any incumbent manager. In the absence of an operating agreement provision providing for~~ The number of managers ~~the number~~ shall be the same as that provided for in the articles of organization. The initial managers shall hold office until the first annual meeting of members and until their successors have been elected and qualified. ~~In the absence of a provision in the operating agreement with respect to the rights of members to vote for managers; Managers shall be elected by a majority of the members.~~

SECTION 12. 7-80-405, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-405. Removal of managers. At a meeting called expressly for that purpose, all managers or any lesser number may be removed ~~with or without cause, in the manner provided in the operating agreement. If the operating agreement does not provide for the removal of managers with or without cause, then all managers or any lesser number may be removed~~ with or without cause by a vote of the majority of the members then entitled to vote at an election of managers.

SECTION 13. 7-80-406 (1) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

7-80-406. Duties of manager. (1) A manager elected pursuant to section 7-80-402 ~~and as prescribed in the operating agreement of the limited liability company~~ shall perform his duties as a manager in good faith, in a manner he reasonably believes to be in the best interests of the limited liability company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his duties shall not have any liability by reason of being or having been a manager of the limited liability company.

(4) Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on in the usual way the business of the limited liability company of which he is a manager, binds the

limited liability company, unless ~~such act is in contravention of the articles of organization or the operating agreement or unless~~ the manager so acting otherwise lacks the authority to act for the limited liability company and the person with whom he is dealing has knowledge of the fact that he has no such authority.

SECTION 14. 7-80-407, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-407. Contracting debts. Except as otherwise provided in this article, ~~the articles of organization, or the operating agreement,~~ 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.

SECTION 15. 7-80-409, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-409. Business transactions of member or manager with the limited liability company. ~~Except as provided in the operating agreement,~~ A member or a manager may lend money to, act as surety for, 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; except that this section shall not be construed to relieve a manager from any of his duties as specified in section 7-80-406.

SECTION 16. 7-80-410, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

7-80-410. Indemnification of members, managers, employees, or agents.

(1) A LIMITED LIABILITY COMPANY SHALL INDEMNIFY EVERY MEMBER AND MANAGER IN RESPECT OF PAYMENTS MADE AND PERSONAL LIABILITIES REASONABLY INCURRED BY THAT MEMBER OR MANAGER IN THE ORDINARY AND PROPER CONDUCT OF THE LIMITED LIABILITY COMPANY'S BUSINESS OR FOR THE PRESERVATION OF THE LIMITED LIABILITY COMPANY'S BUSINESS OR PROPERTY.

(2) (a) A LIMITED LIABILITY COMPANY MAY INDEMNIFY AND ADVANCE EXPENSES PURSUANT TO SUBSECTION (1) OF THIS SECTION TO AN EMPLOYEE OR AGENT OF THE LIMITED LIABILITY COMPANY WHO IS NOT A MANAGER TO THE SAME EXTENT AS A MANAGER.

(b) A LIMITED LIABILITY COMPANY MAY INDEMNIFY AND ADVANCE EXPENSES TO AN EMPLOYEE OR AGENT OF THE LIMITED LIABILITY COMPANY WHO IS NOT A MANAGER TO A GREATER EXTENT IF CONSISTENT WITH LAW AND IF PROVIDED FOR BY ITS ARTICLES OF ORGANIZATION, ITS OPERATING AGREEMENT, OR IN A CONTRACT.

(3) A LIMITED LIABILITY COMPANY MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF A PERSON WHO IS OR WAS A MANAGER, EMPLOYEE, FIDUCIARY, OR AGENT OF THE LIMITED LIABILITY COMPANY OR WHO, WHILE A MANAGER, EMPLOYEE, FIDUCIARY, OR AGENT OF THE LIMITED LIABILITY COMPANY, IS OR WAS SERVING AT THE REQUEST OF THE LIMITED LIABILITY COMPANY AS MANAGER, OFFICER, PARTNER, TRUSTEE, EMPLOYEE, FIDUCIARY, OR AGENT OF ANY OTHER FOREIGN OR DOMESTIC LIMITED LIABILITY COMPANY OR ANY CORPORATION, PARTNERSHIP, JOINT VENTURE,

TRUST, OTHER ENTERPRISE, OR EMPLOYEE BENEFIT PLAN AGAINST ANY LIABILITY ASSERTED AGAINST OR INCURRED BY SUCH PERSON IN ANY SUCH CAPACITY OR ARISING OUT OF SUCH PERSON'S STATUS AS SUCH, WHETHER OR NOT THE LIMITED LIABILITY COMPANY WOULD HAVE THE POWER TO INDEMNIFY SUCH PERSON AGAINST SUCH LIABILITY UNDER THE PROVISIONS OF THIS SECTION. ANY SUCH INSURANCE MAY BE PROCURED FROM ANY INSURANCE COMPANY DESIGNATED BY THE MEMBERS OF THE LIMITED LIABILITY COMPANY, WHETHER SUCH INSURANCE COMPANY IS FORMED UNDER THE LAWS OF THIS STATE OR ANY OTHER JURISDICTION OF THE UNITED STATES OR ELSEWHERE.

SECTION 17. The introductory portion to 7-80-411 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-411. Records. (1) Each limited liability company shall keep ~~at an office specified in the manner provided in the operating agreement or, if none,~~ at the registered office, the following:

SECTION 18. 7-80-502 (1) and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

7-80-502. Liability for contributions. (1) ~~Except as provided in the 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 records required to be kept by section 7-80-411, of such contribution that has not been made.

(2) ~~Unless otherwise provided in the operating agreement,~~ The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent in writing of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation.

SECTION 19. 7-80-503, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-503. Sharing of profits and losses. 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 operating agreement. If the operating agreement does not so provide in writing, profits and losses shall be allocated~~ on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section 7-80-411, of the contributions made by each member.

SECTION 20. 7-80-504, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-504. 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 operating agreement. If the operating agreement does not so provide in writing, distributions shall be made~~ on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section 7-80-411, of the contributions made by each member.

SECTION 21. 7-80-602, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-602. Resignation of member. UNLESS PROHIBITED IN A WRITTEN OPERATING AGREEMENT, a member may resign from a limited liability company at any time by giving written notice to the other members, but, if the resignation violates the operating agreement, the limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to him.

SECTION 22. 7-80-603, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-603. Interest of member upon resignation or withdrawal. ~~Except as otherwise provided in this article, upon resignation, any resigning member is entitled to receive any distribution to which he is entitled under the operating agreement, and if not otherwise provided in the operating agreement, he is entitled to receive, within a reasonable time after resignation, the fair value of his membership interest in the limited liability company as of the date of resignation based upon his right to share in distributions from the limited liability company.~~ A MEMBER WHO HAS RESIGNED OR WITHDRAWN SHALL HAVE NO RIGHT TO PARTICIPATE IN THE MANAGEMENT OF THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY AND IS ENTITLED ONLY TO RECEIVE THE SHARE OF THE PROFITS OR OTHER COMPENSATION BY WAY OF INCOME AND THE RETURN OF CONTRIBUTIONS, TO WHICH SUCH MEMBER WOULD HAVE BEEN ENTITLED IF THE MEMBER HAD NOT RESIGNED OR WITHDRAWN.

SECTION 23. 7-80-604, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-604. Distribution in kind. ~~Except as provided in writing in the operating agreement,~~ A member, regardless of the nature of his 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 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 him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company.

SECTION 24. 7-80-607 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

7-80-607. Liability upon return of contribution. (1) ~~If a member has received the return of any part of his contribution without violation of the operating agreement or this article, he is liable to the limited liability company for a period of six years thereafter for the amount of the returned contribution, but only to the extent necessary~~

~~to discharge the limited liability company's liability to creditors who extended credit to the limited liability company during the period the contribution was held by the limited liability company.~~

SECTION 25. 7-80-702 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-702. Interest in limited liability company - transferability of interest.

(1) The interest of each member in a limited liability company constitutes the personal property of the member and may be transferred or assigned. ~~as provided in the operating agreement.~~ However, if all of the other members of the limited liability company other than the member proposing to dispose of his or its interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member. The transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

SECTION 26. 7-80-704, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-704. Deceased or incompetent members who are individuals - dissolved or terminated members who are legal entities.

(1) If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the ~~member's rights for the purpose of settling his estate or administering his property~~ POWERS OF AN ASSIGNEE OR TRANSFEREE OF THE MEMBER.

(2) If a member is a corporation, trust, or other entity and is dissolved or terminated, ~~the powers of that member may be exercised by its legal representative or successor~~ THE LEGAL REPRESENTATIVE OR SUCCESSOR OF THE MEMBER MAY EXERCISE ALL OF THE POWERS OF AN ASSIGNEE OR TRANSFEREE OF THE MEMBER.

(3) UPON DEATH, INCOMPETENCY, DISSOLUTION, OR TERMINATION AS CONTEMPLATED IN SUBSECTION (1) OR (2) OF THIS SECTION, THE MEMBER'S INTEREST SHALL BE DEEMED TRANSFERRED OR ASSIGNED FOR PURPOSES OF SECTION 7-80-702.

SECTION 27. 7-80-706 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-706. Voting. (2) ~~Unless the operating agreement provides otherwise,~~ Any member may vote in person or by proxy.

SECTION 28. 7-80-707 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-707. Meetings of members. (3) Special meetings of the members may be called by any manager or managers OR by not less than one-tenth of all the members entitled to vote at the meeting. ~~or by such other persons as may be provided in the~~

~~articles of organization or the operating agreement.~~

SECTION 29. 7-80-708, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-708. Quorum of members - vote required. ~~Unless otherwise provided in the articles of organization or in the operating agreement,~~ A majority of the members entitled to vote shall constitute a quorum at the meeting of members. If a quorum is present, the affirmative vote of the majority of the members represented at the meeting and entitled to vote on the subject matter shall be the act of the members. ~~unless the vote of a greater proportion or number or voting by classes is required by this article, the articles of organization, or the operating agreement.~~ If a quorum is not represented at any meeting of the members, such meeting may be adjourned for a period not to exceed sixty days at any one adjournment.

SECTION 30. 7-80-709 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-709. Notice of members' meetings. (3) When a meeting is adjourned to another time or place, ~~unless the operating agreement otherwise requires,~~ notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the limited liability company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.

SECTION 31. 7-80-711 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-711. Action by members without a meeting. (1) ~~Unless the articles of organization or the operating agreement provide otherwise,~~ Action required or permitted by this article to be taken at a members' meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each member entitled to vote. Action taken under this subsection (1) is effective when all members entitled to vote have signed the consent, unless the consent specifies a different effective date.

SECTION 32. 7-80-801 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

7-80-801. Dissolution. (1) A limited liability company organized under this article shall be dissolved upon the occurrence of any of the following events:

- (a) ~~When the period fixed for the duration of the limited liability company expires;~~
- (b) By the unanimous written agreement of all members; ~~or~~
- (c) Upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company, ~~unless there are at least two remaining members and 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~~ within ninety days after the termination, AT WHICH TIME THE REMAINING MEMBERS MAY AGREE TO THE APPOINTMENT OF ONE OR MORE ADDITIONAL MEMBERS, MANAGERS, OR BOTH; OR

(d) AT THE TIME OR UPON THE OCCURRENCE OF EVENTS SPECIFIED IN WRITING IN THE ARTICLES OF ORGANIZATION OR AN OPERATING AGREEMENT.

SECTION 33. 7-80-805 (1) (b) and (1) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

7-80-805. Distribution of assets upon dissolution. (1) In settling accounts after dissolution, the assets of the limited liability company shall be distributed as follows:

(b) ~~Except as provided in the operating agreement,~~ To members and former members of the limited liability company in satisfaction of liabilities for distributions under section 7-80-601 or 7-80-603; and

(c) ~~Except as provided in the operating agreement,~~ To members of the limited liability company for the return of their contributions and respecting their membership interests in the proportions in which the members share in distributions.

SECTION 34. Article 80 of title 7, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW PARTS to read:

PART 10 MERGER AND CONVERSION

7-80-1001. Conversion of partnership or limited partnership to limited liability company. (1) (a) A PARTNERSHIP OR LIMITED PARTNERSHIP MAY BE CONVERTED TO A LIMITED LIABILITY COMPANY PURSUANT TO THIS SECTION.

(b) THE TERMS AND CONDITIONS OF A CONVERSION OF A PARTNERSHIP OR LIMITED PARTNERSHIP TO A LIMITED LIABILITY COMPANY MUST, IN THE CASE OF A PARTNERSHIP OR LIMITED PARTNERSHIP, BE APPROVED BY ALL THE PARTNERS OR BY A NUMBER OR PERCENTAGE SPECIFIED FOR CONVERSION IN THE PARTNERSHIP AGREEMENT.

(2) AFTER THE CONVERSION IS APPROVED UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THE PARTNERSHIP OR LIMITED PARTNERSHIP SHALL FILE ARTICLES OF ORGANIZATION WITH THE OFFICE OF THE SECRETARY OF STATE WHICH SATISFY THE REQUIREMENTS OF SECTION 7-80-204 AND WHICH INCLUDE:

(a) A STATEMENT THAT THE PARTNERSHIP OR LIMITED PARTNERSHIP WAS CONVERTED TO A LIMITED LIABILITY COMPANY FROM A PARTNERSHIP OR LIMITED PARTNERSHIP, AS THE CASE MAY BE;

(b) ITS FORMER NAME;

(c) IN THE CASE OF A PARTNERSHIP OR LIMITED PARTNERSHIP, A STATEMENT OF THE

NUMBER OF VOTES CAST BY THE PARTNERS ENTITLED TO VOTE FOR AND AGAINST THE CONVERSION AND, IF THE VOTE IS LESS THAN UNANIMOUS, THE NUMBER OR PERCENTAGE REQUIRED TO APPROVE THE CONVERSION UNDER THE PARTNERSHIP AGREEMENT; AND

(d) IN THE CASE OF A LIMITED PARTNERSHIP, THE LIMITED PARTNERSHIP SHALL CANCEL ITS CERTIFICATE OF LIMITED PARTNERSHIP PURSUANT TO SECTION 7-62-203.

(4) THE CONVERSION TAKES EFFECT, IN THE CASE OF A PARTNERSHIP, WHEN THE ARTICLES OF ORGANIZATION ARE FILED WITH THE OFFICE OF THE SECRETARY OF STATE OR AT ANY LATER DATE SPECIFIED IN THE ARTICLES OF ORGANIZATION OR, IN THE CASE OF A LIMITED PARTNERSHIP, WHEN THE CERTIFICATE OF LIMITED PARTNERSHIP IS CANCELED.

(5) (a) A GENERAL PARTNER WHO BECOMES A MEMBER OF A LIMITED LIABILITY COMPANY AS A RESULT OF A CONVERSION REMAINS LIABLE AS A GENERAL PARTNER FOR AN OBLIGATION INCURRED BY THE PARTNERSHIP OR LIMITED PARTNERSHIP BEFORE THE CONVERSION TAKES EFFECT.

(b) IF THE OTHER PARTY TO A TRANSACTION WITH THE LIMITED LIABILITY COMPANY REASONABLY BELIEVES WHEN ENTERING THE TRANSACTION THAT THE MEMBER UNDERTAKING THE TRANSACTION IS A GENERAL PARTNER IN A PARTNERSHIP OR A LIMITED PARTNERSHIP, THE MEMBER IS LIABLE FOR AN OBLIGATION INCURRED BY THE LIMITED LIABILITY COMPANY WITHIN NINETY DAYS AFTER THE CONVERSION TAKES EFFECT. THE GENERAL PARTNER'S LIABILITY FOR ALL OTHER OBLIGATIONS OF THE LIMITED LIABILITY COMPANY INCURRED AFTER THE CONVERSION TAKES EFFECT IS THAT OF A MEMBER AS PROVIDED IN THIS ARTICLE.

(c) A LIMITED PARTNER WHO BECOMES A MEMBER AS A RESULT OF A CONVERSION REMAINS LIABLE ONLY AS A LIMITED PARTNER FOR AN OBLIGATION INCURRED BY THE LIMITED PARTNERSHIP BEFORE THE CONVERSION TAKES EFFECT.

7-80-1002. Effect of conversion. (1) A PARTNERSHIP OR LIMITED PARTNERSHIP THAT HAS BEEN CONVERTED PURSUANT TO THIS ARTICLE IS FOR ALL PURPOSES THE SAME ENTITY THAT EXISTED BEFORE THE CONVERSION.

(2) WHEN A CONVERSION TAKES EFFECT:

(a) ALL PROPERTY OWNED BY THE CONVERTING PARTNERSHIP OR LIMITED PARTNERSHIP REMAINS VESTED IN THE CONVERTED ENTITY;

(b) ALL OBLIGATIONS OF THE CONVERTING PARTNERSHIP OR LIMITED PARTNERSHIP CONTINUE AS OBLIGATIONS OF THE CONVERTED ENTITY; AND

(c) AN ACTION OR PROCEEDING PENDING AGAINST THE CONVERTING PARTNERSHIP OR LIMITED PARTNERSHIP MAY BE CONTINUED AS IF THE CONVERSION HAD NOT OCCURRED.

7-80-1003. Merger of entities. (1) PURSUANT TO A PLAN OF MERGER APPROVED UNDER SUBSECTION (3) OF THIS SECTION, A LIMITED LIABILITY COMPANY MAY BE MERGED WITH ONE OR MORE LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR

LIMITED PARTNERSHIPS.

(2) THE PLAN OF MERGER MUST SET FORTH:

(a) THE NAME OF EACH LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER;

(b) THE NAME OF THE SURVIVING ENTITY INTO WHICH THE OTHER LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR LIMITED PARTNERSHIPS WILL MERGE;

(c) WHETHER THE SURVIVING ENTITY IS A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP AND THE STATUS OF EACH MEMBER AND PARTNER THEREOF;

(d) THE TERMS AND CONDITIONS OF THE MERGER;

(e) THE MANNER AND BASIS OF CONVERTING THE INTERESTS OF EACH PARTY TO THE MERGER INTO INTERESTS OR OBLIGATIONS OF THE SURVIVING ENTITY, OR INTO CASH OR OTHER PROPERTY, IN WHOLE OR IN PART; AND

(f) THE STREET ADDRESS OF THE SURVIVING ENTITY'S PRINCIPAL PLACE OF BUSINESS.

(3) THE PLAN OF MERGER MUST BE APPROVED:

(a) IN THE CASE OF A LIMITED LIABILITY COMPANY THAT IS A PARTY TO THE MERGER, BY THE VOTE REQUIRED FOR APPROVAL OF A MERGER BY THE LAW OF THE STATE OR FOREIGN JURISDICTION IN WHICH THE LIMITED LIABILITY COMPANY IS ORGANIZED AND, IN THE ABSENCE OF SUCH SPECIFICALLY APPLICABLE LAW, BY ALL THE MEMBERS, NOTWITHSTANDING A PROVISION TO THE CONTRARY IN THE OPERATING AGREEMENT;

(b) IN THE CASE OF A PARTNERSHIP THAT IS A PARTY TO THE MERGER, BY ALL THE PARTNERS, OR A NUMBER OR PERCENTAGE SPECIFIED FOR MERGER IN THE PARTNERSHIP AGREEMENT; AND

(c) IN THE CASE OF A LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER, BY THE VOTE REQUIRED FOR APPROVAL OF A MERGER BY THE LAW OF THE STATE OR FOREIGN JURISDICTION IN WHICH THE LIMITED PARTNERSHIP IS ORGANIZED AND, IN THE ABSENCE OF SUCH SPECIFICALLY APPLICABLE LAW, ALL THE PARTNERS OR BY A NUMBER OR PERCENTAGE SPECIFIED FOR MERGER IN THE PARTNERSHIP AGREEMENT.

(4) AFTER A PLAN OF MERGER IS APPROVED AND BEFORE THE MERGER TAKES EFFECT, THE PLAN MAY BE AMENDED OR ABANDONED AS PROVIDED IN THE PLAN.

(5) THE MERGER TAKES EFFECT ON THE LATEST OF:

(a) THE APPROVAL OF THE PLAN OF MERGER BY EACH PARTY TO THE MERGER, AS PROVIDED IN SUBSECTION (3) OF THIS SECTION;

(b) THE FILING BY EACH PARTY TO THE MERGER OF ANY DOCUMENTS REQUIRED BY

STATUTE TO BE FILED AS A CONDITION TO THE EFFECTIVENESS OF THE MERGER; OR

(c) ANY EFFECTIVE DATE SPECIFIED IN THE PLAN OF MERGER.

7-80-1004. Effect of merger. (1) WHEN A MERGER TAKES EFFECT:

(a) EVERY LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER OTHER THAN THE SURVIVING ENTITY CEASES TO EXIST;

(b) ALL PROPERTY OWNED BY EACH OF THE MERGED LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR LIMITED PARTNERSHIPS VESTS IN THE SURVIVING ENTITY;

(c) ALL OBLIGATIONS OF EVERY LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER BECOME THE OBLIGATIONS OF THE SURVIVING ENTITY; AND

(d) AN ACTION OR PROCEEDING PENDING AGAINST A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER MAY BE CONTINUED AS IF THE MERGER HAD NOT OCCURRED OR THE SURVIVING ENTITY MAY BE SUBSTITUTED AS A PARTY TO THE ACTION OR PROCEEDING.

(2) THE SECRETARY OF STATE IS THE AGENT FOR SERVICE OF PROCESS IN AN ACTION OR PROCEEDING AGAINST A SURVIVING FOREIGN LIMITED LIABILITY COMPANY, FOREIGN PARTNERSHIP, OR FOREIGN LIMITED PARTNERSHIP TO ENFORCE AN OBLIGATION OF A DOMESTIC LIMITED LIABILITY COMPANY, DOMESTIC PARTNERSHIP, OR DOMESTIC LIMITED PARTNERSHIP THAT IS A PARTY TO A MERGER. THE SURVIVING ENTITY SHALL PROMPTLY NOTIFY THE SECRETARY OF STATE OF THE MAILING ADDRESS OF ITS PRINCIPAL PLACE OF BUSINESS AND OF ANY CHANGE OF ADDRESS. UPON RECEIPT OF PROCESS, THE SECRETARY OF STATE SHALL MAIL A COPY OF THE PROCESS TO THE SURVIVING FOREIGN LIMITED LIABILITY COMPANY, FOREIGN PARTNERSHIP, OR FOREIGN LIMITED PARTNERSHIP.

(3) A MEMBER OF THE SURVIVING LIMITED LIABILITY COMPANY OR A PARTNER OF THE SURVIVING PARTNERSHIP OR LIMITED PARTNERSHIP IS LIABLE FOR ALL OBLIGATIONS OF A PARTY TO THE MERGER FOR WHICH THE MEMBER OR PARTNER WAS PERSONALLY LIABLE BEFORE THE MERGER, IN ADDITION TO ANY LIABILITIES THE MEMBER OR PARTNER MAY HAVE BY REASON OF BEING A MEMBER OR PARTNER OF SUCH SURVIVING LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP.

7-80-1005. Statement of merger. (1) AFTER A MERGER, THE SURVIVING LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP MAY FILE A STATEMENT THAT ONE OR MORE LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR LIMITED PARTNERSHIPS HAVE MERGED INTO THE SURVIVING ENTITY.

(2) A STATEMENT OF MERGER MUST CONTAIN:

(a) THE NAME OF EACH LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER;

(b) THE NAME OF THE SURVIVING ENTITY INTO WHICH THE OTHER LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR LIMITED PARTNERSHIPS WERE MERGED;

(c) THE STREET ADDRESS OF THE SURVIVING ENTITY'S PRINCIPAL PLACE OF BUSINESS AND AN OFFICE IN THIS STATE, IF ANY; AND

(d) WHETHER THE SURVIVING ENTITY IS A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, PROPERTY OF THE SURVIVING LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT BEFORE THE MERGER WAS HELD IN THE NAME OF ANOTHER PARTY TO THE MERGER IS PROPERTY HELD IN THE NAME OF THE SURVIVING ENTITY UPON FILING A STATEMENT OF MERGER.

(4) REAL PROPERTY OF THE SURVIVING LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT BEFORE THE MERGER WAS HELD IN THE NAME OF ANOTHER PARTY TO THE MERGER IS PROPERTY HELD IN THE NAME OF THE SURVIVING ENTITY UPON RECORDING A CERTIFIED COPY OF THE STATEMENT OF MERGER IN THE OFFICE FOR RECORDING TRANSFERS OF THAT REAL PROPERTY.

(5) A FILED AND, WHERE APPROPRIATE, RECORDED STATEMENT OF MERGER, EXECUTED AND VERIFIED BY A MEMBER OR MANAGER, STATING THE NAME OF THE LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP THAT IS A PARTY TO THE MERGER IN WHOSE NAME PROPERTY WAS HELD BEFORE THE MERGER AND THE NAME OF THE SURVIVING ENTITY, BUT NOT CONTAINING ALL OF THE OTHER INFORMATION REQUIRED BY SUBSECTION (2) OF THIS SECTION, OPERATES WITH RESPECT TO THE LIMITED LIABILITY COMPANIES, PARTNERSHIPS, OR LIMITED PARTNERSHIPS NAMED TO THE EXTENT PROVIDED IN SUBSECTIONS (3) AND (4) OF THIS SECTION.

7-80-1006. Nonexclusive. THIS PART 10 DOES NOT PRECLUDE A LIMITED LIABILITY COMPANY, PARTNERSHIP, OR LIMITED PARTNERSHIP FROM BEING CONVERTED OR MERGED IN ANY OTHER MANNER PROVIDED BY LAW.

PART 11 APPLICABILITY OF ARTICLE

7-80-1101. Application to existing limited liability companies. (1) A LIMITED LIABILITY COMPANY FORMED UNDER THIS ARTICLE PRIOR TO JULY 1, 1994, MAY ELECT TO BE GOVERNED BY THE PROVISIONS OF THIS ARTICLE. ALL OF THE MEMBERS MAY MAKE AN ELECTION FOR LIMITED LIABILITY COMPANY AT ANY TIME ON OR AFTER JULY 1, 1994, BY FILING AMENDED ARTICLES OF ORGANIZATION THAT COMPLY WITH THE PROVISIONS OF SECTION 7-80-201 AND CONTAIN AN AFFIRMATIVE STATEMENT THAT THE MEMBERS HAVE ELECTED TO BE GOVERNED BY THE PROVISIONS OF THIS ARTICLE.

(2) A LIMITED LIABILITY COMPANY FORMED UNDER THIS ARTICLE PRIOR TO JULY 1, 1994, UNTIL IT ELECTS TO BE GOVERNED BY THE PROVISIONS OF THIS ARTICLE, SHALL BE GOVERNED BY THE PROVISIONS OF THE "COLORADO LIMITED LIABILITY COMPANY ACT" AS IN EFFECT IMMEDIATELY PRIOR TO JULY 1, 1994.

SECTION 35. Effective date. This act shall take effect July 1, 1994.

SECTION 36. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 19, 1994