

**WYOMING LIMITED LIABILITY COMPANY ACT**

**CHAPTER 15**

**LIMITED LIABILITY COMPANIES**

**Short title.**

**17-15-101.** This act shall be known and may be cited as the “Wyoming Limited Liability Company Act”.

**Definitions.**

**17-15-102.**

(a) As used in this act:

- (i) “Bankrupt” means bankrupt under the federal Bankruptcy Act;
- (ii) “Court” includes every court and judge having jurisdiction in the case;
- (iii) “Limited liability company” or “company” means a limited liability company organized and existing under this act;
- (iv) “Person” includes individuals, general partnerships, limited partnerships, limited liability companies, corporations, trusts, business trusts, real estate investment trusts, estates and other associations;
- (v) “Real property” includes land, any interest, leasehold or estate in land and any improvements on it;
- (vi) “This act” means W.S. 17-15-101 through 17-15-144;
- (vii) “Flexible limited liability company” means a limited liability company organized and existing under this act which shall have elected, by affirmative statement in its articles of organization expressly referring to W.S. 17-15-107(a)(x), to be authorized to adopt provisions within its operating agreement as authorized by W.S. 17-15-144.

**Purpose.**

**17-15-103.**

- (a) Limited liability companies may be organized under this act for any lawful purpose, except for the purpose of banking or acting as an insurer as defined in W.S. 26-1-102(a)(xvi).
- (b) Nothing in this act shall be interpreted as precluding an individual whose occupation requires licensure under Wyoming law from forming a limited liability company if the applicable licensing statutes do not prohibit it and the licensing body does not prohibit it by rule or regulation adopted consistent with the appropriate licensing statute. No limited liability company may offer professional services or practice a profession except by and through its licensed members or licensed employees, each of whom shall retain his professional license in good standing and shall remain as fully liable and responsible for his professional activities, and subject to all rules, regulations, standards and requirements pertaining thereto, as though practising individually rather than in a limited liability company.

### **Powers.**

#### **17-15-104.**

- (a) Each limited liability company organized and existing under this act may:
  - (i) Sue and be sued, complain and defend, in its name;
  - (ii) Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
  - (iii) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
  - (iv) Lend money to and otherwise assist its members, managers and employees;
  - (v) 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 or limited partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of it;
  - (vi) Make contracts and guarantees and 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 or pledge of all or any part of its property, franchises and income;

- (vii) Lend money for its proper purposes, invest and reinvest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;
- (viii) Conduct its business, carry on its operations and have and exercise the powers granted by this act in any state, territory, district or possession of the United States, or in any foreign country;
- (ix) Elect or appoint managers, officers, employees and agents of the limited liability company, and define their duties and authority, which may include authority also delegated to the members or managers under W.S. 17-15-117 and 17-15-118, and fix their compensation;
- (x) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of the affairs of the limited liability company;
- (xi) Indemnify a member or manager or former member or manager of the limited liability company against expenses actually and reasonably incurred by him or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he or it is made a party by reason of being or having been such member or manager, except in relation to matters as to which he or it shall be adjudged in the action, suit or proceeding to be liable to the company for negligence or misconduct in the performance of duty or to have received improper personal benefit on account thereof; and to make any other indemnification that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice;
- (xii) Cease its activities and surrender its certificate of organization;
- (xiii) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;
- (xiv) Become a member of a general partnership, limited partnership, joint venture or similar association, or any other limited liability company;
- (xv) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, ownership interest bonus plans and option plans, and benefit or incentive plans for any or all of its current or former managers, officers, employees and agents;

- (xvi) Make donations for the public welfare or for charitable, scientific or educational purposes.

**Name.**

**17-15-105.**

- (a) The words “limited liability company,” or its abbreviations “LLC” or “L.L.C.,” “limited company,” or its abbreviations “LC” or “L.C.,” “Ltd. liability company,” “Ltd. liability co.” or “limited liability co.” shall be included in the name of every limited liability company formed under the provisions of this act and, in addition, the limited liability company name may not:
  - (i) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one (1) or more of the purposes contained in its articles of organization;
  - (ii) Be the same as, or deceptively similar to, any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as provided in W.S. 17-16-401;

**Formation.**

**17-15-106.**

Any person may form a limited liability company which shall have two (2) or more members by signing and delivering one (1) original and one (1) exact or conformed copy of the articles of organization to the secretary of state for filing. The person forming the company need not be a member of the limited liability company.

**Articles of organization.**

**17-15-107.**

- (a) The articles of organization shall set forth:
  - (i) The name of the limited liability company;
  - (ii) The period of its duration, which shall be thirty (30) years from the date of filing with the secretary of state if no period of duration is specifically set forth in the articles of organization;
  - (iii) The purpose for which the limited liability company is organized;

- (iv) The name and address of its registered agent in the state;
  - (v) The total amount of cash and a description and agreed value of property other than cash contributed;
  - (vi) The total additional contributions, if any, agreed to be made by all members and the times at which or events upon the happening of which they shall be made;
  - (vii) The right, if given, of the members to admit additional members, and the terms and conditions of the admission;
  - (viii) The right, if given, of the remaining members of the limited liability company to continue the business on 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;
  - (ix) If the limited liability company is to be managed by a manager or managers, the articles of organization shall so state and shall set out the names and addresses of such manager or managers who are to serve as managers until the first annual meeting of members or until their successors are elected and qualify. If the management of a limited liability company is reserved to the members, the names and addresses of the members shall be set out in the articles of organization;
  - (x) If the limited liability company is to elect status as a flexible limited liability company, the articles of organization shall so state by express reference to this paragraph, and the limited liability company thereby shall be authorized to adopt provisions within its operating agreement as authorized by W.S. 17-15-144;
  - (xi) 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 act are required or permitted to be set out in the operating agreement of the limited liability company.
- (b) It is not necessary to set out in the articles of organization any of the powers enumerated in this act.
- (c) The articles of organization shall be accompanied by a written consent to appointment manually signed by the registered agent.

**Filing of articles of organization.**

**17-15-108.**

- (a) One (1) original and one (1) exact or conformed copy 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 in this act prescribed:
  - (i) Endorse on the original and conformed copy the word “Filed” and the month, day and year of the filing thereof;
  - (ii) File the original in his office;
  - (iii) Issue a certificate of organization to which he shall affix the conformed copy.
- (b) The certificate of organization, together with the conformed copy of the articles of organization affixed to it by the secretary of state, shall be returned to the representative of the limited liability company.

**Effect of issuance of certificate of organization.**

**17-15-109.**

- (a) Upon the issuance of the certificate of organization, the limited liability company shall be considered organized, 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 act, 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.

**Registered office and registered agent to be maintained.**

**17-15-110.**

- (a) Each limited liability company shall have and continuously maintain in this state:
  - (i) A registered office which may be, but need not be, the same as its place of business;

- (ii) 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.

**Change of registered office or registered agent.**

**17-15-111.**

- (a) A limited liability company may change its registered office or agent, or both, upon filing in the office of the secretary of state a statement setting forth:
  - (i) The name of the limited liability company;
  - (ii) The address of its then registered office;
  - (iii) If the address of its registered office be changed, the address to which the registered office is to be changed;
  - (iv) The name of its then registered agent;
  - (v) If its registered agent be changed, the name of its successor registered agent;
  - (vi) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
  - (vii) That the change was authorized by affirmative vote of a majority of the members of the limited liability company.
- (b) The statement shall be signed and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of this act, he shall file the statement in his office, and upon filing the change of address of the registered office or the appointment of a new registered agent or both, as the case may be is effective.
- (c) Any registered agent of a limited liability company may resign as agent upon filing a written notice thereof, signed with one (1) original and one (1) exact or conformed copy, with the secretary of state, who shall forthwith mail a copy thereof to the limited liability company at its principal mailing address as defined and prescribed by the secretary of state. The appointment of the agent shall terminate upon the expiration of thirty (30) days after receipt of notice by the secretary of state.

**Failure to maintain registered agent or registered office or pay annual fee.**

**17-15-112.**

If any limited liability company has failed for thirty (30) days to appoint and maintain a registered agent in this state, or has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change, or has failed to pay the fee required by W.S. 17-15-132(a)(vi) it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The secretary of state shall mail by certified mail a notice of its failure to comply with aforesaid provisions. Unless compliance is made within thirty (30) days of the delivery of notice, the limited liability company shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Provided, that any defunct limited liability company may at any time within two (2) years after the forfeiture of its certificate, in the manner herein provided, be revived and reinstated, by filing the necessary statement under this act and paying the prescribed fee, together with a penalty of one hundred dollars (\$100.00). The limited liability company shall retain its registered name during the two (2) year reinstatement period under this section.

NOTE: The following section is effective January 1, 2000.

**Failure to maintain registered agent or registered office or pay annual fee.**

**17-15-112.**

- (a) If any limited liability company has failed for thirty (30) days to appoint and maintain a registered agent in this state, or has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The secretary of state shall mail by certified mail a notice of its failure to comply with aforesaid provisions. Unless compliance is made within thirty (30) days of the delivery of notice, the limited liability company shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Provided, that any defunct limited liability company may at any time within two (2) years after the forfeiture of its certificate, in the manner herein provided, be revived and reinstated, by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of one hundred dollars (\$100.00). The reinstatement fee shall not exceed the costs of providing the reinstatement service. The limited liability company shall retain its registered name during the two (2) year reinstatement period under this section.

NOTE: This section is effective January 1, 2000.

- (b) If any limited liability company has failed to pay the tax required by W.S. 17-15-132(a)(vi) it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof. The forfeiture shall be made effective in the following manner. The secretary of state shall provide notice to the limited liability company at its last known mailing address by first class mail and publish once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the registered office of the company is located, notice that the company failed to comply with W.S. 17-15-132(a)(vi). Unless compliance is made within sixty (60) days of the date of the first publication, the limited liability company shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Provided, that any defunct limited liability company may at any time within two (2) years after the forfeiture of its certificate, be revived and reinstated by paying double the amount of the delinquent taxes.

NOTE: This section is effective January 1, 2000.

#### **Liability of members and managers.**

##### **17-15-113.**

Neither the members of a limited liability company nor the managers of a limited liability company managed by a manager or managers are liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company.

#### **Service of process.**

##### **17-15-114.**

- (a) The registered agent so appointed by a limited liability company shall be an agent of the company upon whom any process, notice or demand required or permitted by law to be served upon the company may be served.
- (b) Whenever a limited liability company shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of the company upon whom any process, notice or demand may be served. Service on the secretary of state of any process, notice or demand shall be made by delivering to and leaving with him, or with any clerk of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall

immediately cause one (1) of the copies thereof to be forwarded by registered mail addressed to the limited liability company at its principal mailing address as defined and prescribed by the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty (30) days.

- (c) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.
- (d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

### **Contributions to capital.**

#### **17-15-115.**

The contributions to capital of a member to the limited liability company may consist of cash or other property, promissory notes or services rendered or to be rendered.

### **Management.**

#### **17-15-116.**

Management of the limited liability company shall be vested in its members, which unless otherwise provided in the operating agreement shall be in proportion to their contribution to the capital of the limited liability company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members; however, if provision is made for it in the articles of organization, management of the limited liability company may be vested in a manager or managers who shall be elected by the members in the manner prescribed by the operating agreement of the limited liability company. If the articles of organization provide for the management of the limited liability company by a manager or managers, unless the operating agreement expressly dispenses with or substitutes for the requirement of annual elections, the manager or managers shall be elected annually by the members in a manner provided in the operating agreement. The manager or managers, or persons appointed by the manager or managers, shall also hold the offices and have the responsibilities accorded to them by the members and set out in the operating agreement of the limited liability company.

### **Contracting debts.**

#### **17-15-117.**

Except as otherwise provided in this act, no debt shall be contracted or liability incurred by or on behalf of a limited liability company, except by one (1) or more of its managers if management of the limited liability company has been vested by the members in a manager or managers or, if management of the limited liability company is retained by the members, then by any member.

### **Property.**

#### **17-15-118.**

Real and personal property owned or purchased by a limited liability company shall be held and owned, and conveyance made, in the limited liability company name. Instruments and documents providing for the acquisition, mortgage or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by one (1) or more managers of a limited liability company having a manager or managers or one (1) or more members of a limited liability company in which management has been retained in the members.

### **Division of profits; impairment of capital.**

#### **17-15-119.**

The limited liability company may, from time to time, divide and allocate the profits and losses of its business among the members and among classes of members of the limited liability company upon the basis stipulated in the operating agreement; provided, that after distribution is made, the assets of the limited liability company are in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions. If the operating agreement does not so provide, profits and losses shall be allocated on the basis of the value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. 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 the operating agreement. If the operating agreement does not so provide, distributions shall be made on the basis of the value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. The provisions of this section regarding the allocation of losses shall not affect the limitation on liability of members and managers set forth in W.S. 17-15-113.

### **Withdrawal or reduction of members' contributions to capital.**

#### **17-15-120.**

- (a) A member shall not receive out of limited liability company property any part of his or its contribution to capital until:

- (i) All liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;
  - (ii) The consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided in this act;
  - (iii) The articles of organization are cancelled or so amended as to set out the withdrawal or reduction.
- (b) Subject to the provisions of subsection (a) of this section, a member may rightfully demand the return of his or its contribution:
- (i) On the dissolution of the limited liability company; or
  - (ii) Unless otherwise prohibited or restricted in the operating agreement, after the member has given all other members of the limited liability company prior notice in writing in conformity with the operating agreement. If the operating agreement does not prohibit or restrict the right to demand the return of capital and no notice period is specified, a member making the demand must give six (6) months prior notice in writing.
- (c) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of his or its contribution, has only the right to demand and receive cash in return for his or its contribution to capital.
- (d) A member of a limited liability company may have the limited liability company dissolved and its affairs wound up when:
- (i) The member rightfully but unsuccessfully has demanded the return of his or its contribution; or
  - (ii) The other liabilities of the limited liability company have not been paid, or the limited liability company property is insufficient for their payment and the member would otherwise be entitled to the return of his or its contribution.

**Liability of member to company.**

**17-15-121.**

- (a) A member is liable to the limited liability company:
- (i) For the difference between his or its contributions to capital as actually made and that stated in the articles of organization,

operating agreement, subscription for contribution or other document executed by the member as having been made by the member; and

- (ii) For any unpaid contribution to capital which he or it agreed in the articles of organization, operating agreement or other document executed by the member to make in the future at the time and on the conditions stated in the articles of organization, operating agreement or other document evidencing such agreement.
- (b) A member holds as trustee for the limited liability company:

  - (i) Specific property stated in the articles of organization, operating agreement or other document executed by the member as contributed by such member, but which was not contributed or which has been wrongfully or erroneously returned; and
  - (ii) 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 the capital of his or its contribution, the contributor is nevertheless liable to the limited liability company, for a period of six (6) years after return of the capital contribution, for any sum, not in excess of the return without interest, necessary to discharge its liability to all creditors of the limited liability company who extended credit during the period the capital contribution was held by the limited liability company or whose claims arose before the return.

**Interest in company; transferability of interest.**

**17-15-122.**

The interest of all members in a limited liability company constitutes the personal estate 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.

### **Dissolution.**

#### **17-15-123.**

- (a) A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:
  - (i) When the period fixed for the duration of the limited liability company shall expire;
  - (ii) By the unanimous written agreement of all members; or
  - (iii) Upon the death, retirement, resignation, expulsion, bankruptcy, 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.
- (b) As soon as possible following the occurrence of any of the events specified in this section effecting the dissolution of the limited liability company, the limited liability company shall execute a statement of intent to dissolve in such form as shall be prescribed by the secretary of state.

### **Filing of statement of intent to dissolve.**

#### **17-15-124.**

- (a) One (1) original and one (1) exact or conformed copy of the statement of intent to dissolve shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and license taxes have been paid as are by law prescribed:
  - (i) Endorse on each original and exact or conformed copy the word "Filed" and the month, day and year of the filing thereof;
  - (ii) File the original in his office;
  - (iii) Return the exact or conformed copy to the limited liability company or its representative.

**Effect of filing of dissolving statement.**

**17-15-125.**

Upon the filing by the secretary of state of a statement of intent to dissolve, the limited liability company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the limited liability company has been entered by a court of competent jurisdiction.

**Distribution of assets upon dissolution.**

**17-15-126.**

- (a) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:
  - (i) Those to creditors, in the order of priority as provided by law, except those to members of the limited liability company on account of their contributions;
  - (ii) Those to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and
  - (iii) Those to members of the limited liability company in respect of their contributions to capital.
- (b) Subject to any statement in the operating agreement, members share in the limited liability company assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

**Articles of dissolution.**

**17-15-127.**

- (a) When all debts, liabilities and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, articles of dissolution shall be delivered to the secretary of state. The statement shall set forth:
  - (i) The name of the limited liability company;

- (ii) That the secretary of state has theretofore filed a statement of intent to dissolve the company and the date on which such statement was filed;
- (iii) That all debts, obligations and liabilities have been paid and discharged or that adequate provision has been made therefor;
- (iv) That all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests;
- (v) That there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

**Filing of articles of dissolution.**

**17-15-128.**

- (a) One (1) original and one (1) exact or conformed copy of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall when all fees and license taxes have been paid as are by law prescribed:
  - (i) Endorse on each original and exact or conformed copy the word "Filed" and the month, day and year of the filing thereof;
  - (ii) File the original in his office;
  - (iii) Issue a certificate of dissolution to which he shall affix the exact or conformed copy.
- (b) The certificate of dissolution, together with the exact or conformed copy of the articles of dissolution 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 act. The manager or managers in office at the time of dissolution, or the survivors of them, 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.

**Cancellation of certificate of organization; amendment of articles of organization.**

**17-15-129.**

- (a) The certificate of organization shall be cancelled by the secretary of state upon issuance of the certificate of dissolution.
- (b) The articles of organization shall be amended when:
  - (i) There is a change in the name of the limited liability company or in the amount or the character of the contributions to capital;
  - (ii) There is a change in the stated purpose of the business of the limited liability company;
  - (iii) There is a false or erroneous statement in the articles of organization;
  - (iv) There is a change in the time as stated in the articles of organization for the dissolution of the limited liability company;
  - (v) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or
  - (vi) 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.
- (c) The form and time for evidencing an amendment to the articles of organization of a limited liability company shall be promulgated by the secretary of state and shall contain such terms and provisions, consistent with this chapter as shall be determined by the secretary of state, provided that amendments evidencing a change in the amount or the character of the contributions to capital of the limited liability company need be made not more frequently than one (1) time per year. One (1) original and one (1) exact or conformed copy of the amendment shall be forwarded to the secretary of state for filing, accompanied by the requisite filing fee.
- (d) Any amendment to the articles of organization shall be adopted in accordance with the operating agreement or with the consent of all members.

**Parties to actions.**

**17-15-130.**

A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.

**Waiver of notice.**

**17-15-131.**

When, under the provisions of this act or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated in it, is equivalent to the giving of notice.

**Fees; annual tax.**

**17-15-132.**

(a) The secretary of state shall charge and collect for:

(i) Filing the original articles of organization and issuing certificates of organization, or issuing a certificate of authority for a foreign limited liability company, if the capital of the limited liability company is:

CAPITAL	FILING FEE
Not in excess of \$50,000.00	\$100.00
\$50,001 to \$100,000.00	\$200.00
In excess of \$100,000.00	\$200.00 for first \$100,000.00 plus \$1.00 for each additional \$1,000.00, provided the fee in no event shall exceed \$25,000.00;

(ii) For amending the articles of organization, a filing fee of thirty-five dollars (\$35.00), together with the appropriate fee set out in subsection [paragraph] (a)(i) of this section if the amendment is to increase the amount of capital;

(iii) Repealed by Laws 1993, ch. 196, \_ 5.

(iv) Repealed by Laws 1993, ch. 196, \_ 5.

- (v) Repealed by Laws 1993, ch. 196, \_ 5.
- (vi) An annual tax of one hundred dollars (\$100.00), due and payable January 2 of each year. This tax is delinquent if not paid by February 1 and an addition to the tax shall then be due of one hundred dollars (\$100.00);

NOTE: The following section is effective January 1, 2000.

- (vi) An annual tax of one hundred dollars (\$100.00), due and payable on or before the first day of the month of registration from every limited liability company organized under the laws of this state and from every foreign limited liability company which obtains the right to transact business in this state;
  - (vii) Filing, service and copying fees for those services provided by his office for which a fee is not otherwise established. A fee shall not exceed the cost of providing the service.
- (b) Except for articles of organization, any document to be filed with the secretary of state shall be signed by the member, members, manager, managers or other authorized individual as set forth in the operating agreement. A person signing a document, including the articles of organization, he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing under this act is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment for not more than six (6) months, or both.

#### **Unauthorized assumption of powers.**

##### **17-15-133.**

All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities.

#### **Charge for service of process.**

##### **17-15-134.**

The secretary of state shall charge and collect a fee at the time of any service of process on him as resident agent of a limited liability company, which may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

#### **Applicability of provisions to foreign and interstate commerce.**

**17-15-135.**

The provisions of this act shall apply to commerce with foreign nations and among the several states only as permitted by law.

**17-15-136.**

Repealed by Laws 1993, ch. 196, \_ 5.

**Secretary of state powers.**

**17-15-137.**

The secretary of state has the power reasonably necessary to perform the duties required of him by this act. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this act.

**Correcting filed document.**

**17-15-138.**

- (a) A company or foreign company may correct a document filed by the secretary of state if the document:
  - (i) Contains an incorrect statement; or
  - (ii) Was defectively executed, attested, sealed, verified or acknowledged.
- (b) A document is corrected:
  - (i) By preparing articles of correction that:
    - (A) Describe the document, including its filing date, or attach a copy of the document to the articles of correction;
    - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
    - (C) Correct the incorrect statement or defective execution.
  - (ii) By delivering the articles of correction to the secretary of state for filing.

## **Merger.**

### **17-15-139.**

- (a) Pursuant to a written plan of merger, a domestic limited liability company may merge with one (1) or more domestic or foreign limited liability companies, limited partnerships or corporations if:
  - (i) The merger is not prohibited by the articles of organization or operating agreement of any domestic limited liability company that is a party to the merger, and each domestic limited liability company party to the merger approves the plan of merger in accordance with W.S. 17-15-140 and complies with the terms of its articles of organization and operating agreement;
  - (ii) Each domestic limited partnership that is a party to the merger complies with any provisions of law applicable to merger of domestic limited partnership;
  - (iii) Each domestic corporation that is a party to the merger complies with any provisions of law applicable to merger of domestic corporations;
  - (iv) The merger is permitted by the laws under which each foreign limited liability company, foreign limited partnership and foreign corporation party to the merger is organized, formed or incorporated, and each such foreign limited liability company, limited partnership or corporation complies with those laws in effecting the merger;
  - (v) No member of a domestic limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger and otherwise consents to becoming personally liable;
  - (vi) In the case of a merger of a limited liability company to which one (1) or more domestic or foreign corporations are parties, a domestic or foreign corporation or limited liability company party to the merger is the surviving entity of the merger.
- (b) The plan of merger shall set forth:
  - (i) The name of each domestic or foreign limited liability company, limited partnership or corporation planning to merge and the name of the surviving domestic or foreign limited liability company, limited partnership or corporation into which each other domestic or foreign limited liability company, limited partnership or corporation plans to merge;

- (ii) The name of the state or country under whose law each domestic or foreign limited liability company, limited partnership or corporation planning to merge is organized, formed or incorporated and the name of the state or country or organization, formation or incorporation of the surviving domestic or foreign limited liability company, limited partnership or corporation;
  - (iii) The terms and conditions of the merger; and
  - (iv) The manner and basis of converting the membership interests of each domestic limited liability company, the partnership interests of each domestic limited partnership and the shares of each domestic corporation party to the merger into membership interests, partnership interests, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, limited partnership or corporation or into cash or other property in whole or in part, and the manner and basis of converting rights to acquire the membership interests of each domestic limited liability company, the partnership interests of each domestic limited partnership and the shares of each domestic corporation party to the merger into rights to acquire membership interests, partnership interests, shares, obligations or other securities of the surviving or any other domestic or foreign limited liability company, limited partnership or corporation or into cash or other property in whole or in part.
- (c) The plan of merger may set forth:
- (i) If a domestic limited liability company is to be the surviving entity, amendments to the articles of organization or the operating agreement of that limited liability company;
  - (ii) If the merger is not to be effective upon the issuance of the certificate of merger described in W.S. 17-15-141(c) by the secretary of state, the future effective date or time of the merger; or
  - (iii) Other provisions relating to the merger.

**Approval of merger by domestic limited liability company.**

**17-15-140.**

- (a) Each domestic limited liability company that is to be a party to a proposed merger shall approve the proposed merger, unless the articles of organization or the operating agreement of that limited liability company provide otherwise, by the unanimous vote of the members of

the limited liability company. However, a provision of a limited liability company's operating agreement purporting to authorize the limited liability company to approve a merger by a less than unanimous vote of the members shall be effective to permit approval of a merger by a less than unanimous vote only if either:

- (i) The operating agreement included that provision at the time each member who does not vote in favor of the merger became bound by the operating agreement; or
  - (ii) The provision was added to the operating agreement through an amendment to which each member who does not vote in favor of the merger specifically consented.
- (b) Any plan of merger may provide for the manner, if any, in which the plan may be amended by a domestic limited liability company party to the merger at any time before the effective date of the certificate of merger issued by the secretary of state for the merger.
- (c) If an amendment to a plan of merger is made in accordance with subsection (b) of this section, and articles of merger already have been filed with the secretary of state, amended articles of merger shall be filed with the secretary of state before the effective date of any certificate of merger issued by the secretary of state for the articles of merger which the amended articles are to supersede.
- (d) Unless the domestic limited liability company's articles of organization or operating agreement or the plan of merger provides otherwise, after the merger has been authorized and at any time before the effective date of the certificate of merger issued by the secretary of state for the merger, the merger may be abandoned by majority vote of the members of the domestic limited liability company. If articles of merger already have been filed with the secretary of state, written notice of abandonment shall be filed with the secretary of state before the effective date of the certificate of merger.

#### **Articles of merger.**

#### **17-15-141.**

- (a) After a plan of merger is approved by each domestic or foreign limited liability company, limited partnership or corporation party to the merger, the surviving domestic or foreign limited liability company, limited partnership or corporation shall file with the secretary of state articles of merger setting forth:
- (i) The plan of merger;

- (ii) The address including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed or incorporated, if the surviving entity of the merger is a foreign limited liability company not registered with the secretary of state under W.S. 17-16-1533, a foreign limited partnership not registered with the secretary of state under W.S. 17-14-1001 et seq., or a foreign corporation without a certificate of authority issued by the secretary of state under W.S. 17-16-1501 et seq.;
  - (iii) A statement that the plan of merger was adopted by each domestic limited liability company party to the merger in accordance with W.S. 17-15-140 and by each domestic limited partnership party to the merger in accordance with any applicable provisions of Wyoming law; and
  - (iv) Any additional information required by W.S. 17-16-1105, if a domestic corporation is a party to the merger.
- (b) If a foreign limited liability company, limited partnership or corporation is a party to the merger, the articles of merger shall contain a statement that the merger is permitted by the state or country under whose law that limited liability company is organized, that limited partnership is formed or that corporation is incorporated and that the foreign limited liability company, limited partnership or corporation has complied with that law in effecting the merger.
- (c) If the secretary of state finds that the articles of merger comply with the requirements of law and that all required fees have been paid, he shall issue a certificate of merger. The certificate of merger shall become effective when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of:
- (i) That date; or
  - (ii) The date that is fifteen (15) days after the date on which the secretary of state issues the certificate of merger.

#### **Effect of merger.**

#### **17-15-142.**

- (a) When a merger takes effect:
- (i) The separate existence of every domestic limited liability company that is a party to the merger except the surviving domestic limited liability company, if any, ceases;

- (ii) The title to all real estate and other property owned by each domestic limited liability company party to the merger is vested in the surviving domestic or foreign limited liability company, limited partnership or corporation without reversion of impairment;
- (iii) The surviving domestic or foreign limited liability company, limited partnership or corporation obtains all liabilities of each domestic limited liability company party to the merger;
- (iv) A proceeding pending by or against any domestic limited liability company party to the merger may be continued as if the merger had not occurred, or the surviving domestic or foreign limited liability company, limited partnership or corporation may be substituted in the proceeding for the domestic limited liability company whose existence ceased;
- (v) The articles of organization and operating agreement of that limited liability company are amended to the extent provided in the plan of merger, if a domestic limited liability company is the surviving entity of the merger; and
- (vi) The former holders of membership interests of every domestic limited liability company party to the merger are entitled only to the rights provided in the plan of merger.

#### **Continuance.**

#### **17-15-143.**

- (a) Subject to subsection (b) of this section, any limited liability company organized for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) under the laws of any foreign jurisdiction may, if the foreign jurisdiction confirms in writing that the limited liability company's domicile has terminated in the foreign jurisdiction, apply to the secretary of state for registration under this act. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued continuing the foreign limited liability company in Wyoming as if it had been organized in this state. The certificate of registration may be subject to any limitations and conditions as may appear proper to the secretary of state.
- (b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the foreign

jurisdiction in which the limited liability company was previously organized.

- (c) The articles of continuance filed by a foreign limited liability company with the secretary of state shall contain:
  - (i) A certified copy of its original articles of organization and all amendments thereto or its equivalent basic charter;
  - (ii) The names of the limited liability company and the foreign jurisdiction in which it has previously been lawfully organized;
  - (iii) The date of organization and the period of duration;
  - (iv) The address of its principal mailing address;
  - (v) The name and address of the proposed registered agent in this state;
  - (vi) The business purposes which it proposes to pursue in this state;
  - (vii) The names and respective business addresses of its members or, if the limited liability company has a manager or managers, the names and respective business addresses of the manager or managers;
  - (viii) Any additional information concerning capital contributions or financial status as the secretary of state deems necessary to establish fees;
  - (ix) A statement that the limited liability company will abide by the constitution and laws of this state;
  - (x) Any additional information necessary or appropriate to enable the secretary of state to determine whether the limited liability company is entitled to a certificate of registration evidencing its authority to transact business in the state and to determine and assess any fees and taxes under the laws of this state;
  - (xi) Any additional information permitted in articles of organization under W.S. 17-15-107(a)(x) [17-15-107(a)(xi)].
- (d) The application shall be executed by the manager or managers if any or by any member who is authorized to execute the application on behalf of the corporation and shall be verified by the officer signing the application.
- (e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the limited liability company's articles of organization or equivalent basic charter or other authorization, if the variation is one which a company organized under the Wyoming Limited Liability Company Act could effect by way of

amendment to its articles of organization. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of organization of the continued limited liability company. The limited liability company may elect to incorporate by reference in the articles of continuance its basic charter or other authorization which has been adopted by it in the foreign jurisdiction, in order to permit the same to continue to act as the articles of organization, provided, however, that the basic charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

- (f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any limited liability company heretofore or hereafter issued a certificate of continuation under this act shall be deemed to have commenced on the date the limited liability company commenced its existence in the jurisdiction in which it was first formed, organized or otherwise came into being. The laws of Wyoming shall apply to a limited liability company continuing under this act to the same extent as if it had been organized under the laws of Wyoming from and after the issuance of a certificate of continuation under this act by the secretary of state. When a foreign limited liability company is continued under this act, the continuance shall not affect the ownership of its property, or its liability for any existing obligations, causes of action, claims, pending or threatened prosecution or civil or administration actions, convictions, rulings, orders or judgments.
- (g) Continuance under this act does not deprive a member of any right or privilege that he claims under, or relieve any member of any liability in respect of, his membership.

#### **Flexible limited liability company.**

#### **17-15-144.**

- (a) The provisions of this section shall apply only to those limited liability companies which have elected to be flexible limited liability companies by an affirmative statement in their articles of organization expressly referring to W.S. 17-15-107(a)(x). All provisions of the Wyoming Limited Liability Company Act shall be applicable to a flexible limited liability company except to the extent expressly replaced or superseded by the provisions of this section.
- (b) Notwithstanding any other provision contained in this act, the interest of a member of a flexible limited liability company is assignable in whole or in part except as provided in the operating agreement. The assignee of a member's interest in a flexible limited liability company shall have no rights other than those permitted to assignees under W.S. 17-15-122 except as provided in the operating agreement or as

permitted by the unanimous consent of the members of the flexible limited liability company other than the member assigning his interest in the flexible limited liability company.

- (c) Notwithstanding any other provision in this act, a flexible limited liability company is dissolved and its affairs shall be wound up upon the occurrence of any event described in W.S. 17-15-123(a) or upon the happening of any other event or events specified in the operating agreement, unless the business of the flexible limited liability company is continued either by the consent of all of the remaining members following the occurrence of any such event or pursuant to a right to continue stated in the operating agreement.
- (d) Notwithstanding any other provision in this act, a flexible limited liability company may have fewer than two (2) members.
- (e) Notwithstanding any other provision in this act, a flexible limited liability company may elect to set forth in its articles of organization a provision which allows for the personal liability of its officers, agents, managers or members. If the articles of organization of a flexible limited liability company do not expressly set forth such election and specifically refer to this subsection, it shall be presumed that the flexible limited liability company has not made the election authorized under this subsection.