

OHIO ADOPTS NEW LIMITED LIABILITY COMPANY ACT

FEBRUARY 2021

On January 8, Ohio Governor Mike DeWine signed into law the Ohio Revised Limited Liability Company Act (the “New Act”). The New Act completely replaces the existing Ohio Limited Liability Company Act (Chapter 1705 of the Ohio Revised Code) with new Chapter 1706 of the Ohio Revised Code. The New Act significantly updates Ohio’s codified law governing limited liability companies, providing increased opportunities and flexibility for the operation and management of an LLC, and making Ohio a potential home for an LLC with features previously available only in other states.

Effective Date

The New Act will become effective on April 12, 2021, but it is not applicable to LLCs until January 1, 2022. On and after January 1, 2022, the New Act will govern all LLCs formed (or qualified to do business as foreign LLCs) in Ohio, regardless of whether the LLC was formed or qualified before or after that date. No changes to an LLC’s organizational documents will be necessary or available before that date in order for an LLC to take advantage of the opportunities available in the New Act.

Business owners, investors, and practitioners should begin to familiarize themselves with the contents of the New Act to prepare for the transition that will occur on January 1, 2022 and to consider whether any of their organizational or management documents should be modified in light of the changes.

Important Highlights of the New Act

The New Act both revises prior concepts addressed in Ohio’s existing LLC law and incorporates several new concepts, which are intended by the Ohio legislature, in part, to address some of the ambiguities in the existing law since, at the time of its enactment, LLCs were a relatively new form of legal entity. Selected highlights of the New Act include:

- **Default Nature of Provisions:** The New Act emphasizes that its contents are generally “default” provisions, which will be applicable only to an LLC that has not adopted an operating agreement with contradicting terms (with limited exceptions). The result is that business-owners and investors will have greater flexibility to negotiate and structure an LLC by contract, with fewer circumstances where the statute would override a contractual provision that the members of the LLC, or certain other parties, have agreed to.
- **Governance Structure Flexibility:** Ohio’s existing LLC law contemplates that an LLC will be either member-managed or manager-managed. The New Act eliminates this distinction and allows an LLC’s operating agreement to describe the governance structure of the LLC without categories. For example, under the New Act, an LLC may implement a form of governance body more akin to that of a for-profit corporation or partnership, such as a board of directors or an oversight committee.
- **Ability to Eliminate Fiduciary Duties:** Under Ohio’s existing LLC law, an LLC cannot entirely eliminate the fiduciary duties of members, managers, or officers. The New Act permits an LLC to more comprehensively limit or eliminate entirely all fiduciary duties of members, managers, and officers. The only non-waivable fiduciary duty is that the members, managers, and officers must abide by the implied covenant of good faith and fair dealing. One practical implication of this for business-owners is that they will have additional flexibility to structure LLCs on a non-arm’s-length basis, where one member may want to provide additional flexibility to another member or management-level individual to devote time to another business and/or compete directly with the LLC.

- **Penalties for Failure to Perform:** The New Act permits an LLC to set forth specified penalties and consequences in its operating agreement that will apply if a member breaches the operating agreement or upon the occurrence of a certain event. Examples of these penalties include, but are not limited to: (i) reducing or eliminating a defaulting member's interest in the LLC, (ii) forcing a sale of a defaulting member's interest in the LLC, or (iii) fixing a value of the defaulting member's interest in the LLC by formula or appraisal and forcing a redemption or sale of the member's interest in the LLC at that value. Business-owners should take note of this drafting flexibility as it allows them to contractually penalize certain actions as a method of maintaining control over the ownership and operation of an LLC, especially when the members of an LLC own their interests disproportionately to one another (e.g., an 80%-20% ownership scenario). Some common situations where such penalties may be useful arise in the context of calls for additional capital contributions or the exercise of a "call option" where the LLC and/or other members have the option to purchase the interests of a member upon the occurrence of certain events.
- **Ability of Operating Agreement to Confer Rights to Person Without Economic Interest:** Unlike Ohio's current LLC law, the New Act permits a person to be a member of an LLC without making any asset or capital contribution to the LLC or having any economic interest in the LLC. The New Act also permits an operating agreement to provide enforceable rights to third parties who are not members of the LLC. These concepts are likely to be most significant in establishing "special purpose entities" in which creditors insist on having the consent of "independent" persons in order for the LLC to take certain actions.
- **Series of Limited Liability Companies:** For business-owners who desire to have capital or other assets invested in different segments of an LLC and have those assets protected from claims against or liabilities incurred by other segments of the LLC, a dramatic aspect of the New Act is that it allows an LLC to establish "series" in which the assets of each series are protected from claims against and liabilities incurred by another series or the LLC as a whole. This aspect is particularly useful in the context of investment funds and may be helpful in other situations as well. The "series" concept is akin to a parent LLC that desires to form and maintain one or more subsidiary LLCs with the same or different investors holding an ownership interest in each series. The formation of an LLC with series may help ease the administrative burden placed on the business-owner seeking to form such a relationship; however, the real utility of an LLC with series versus separate parent-subsidiary LLCs has been debated by both academics and practitioners.
- **Protections Against Creditors of Members:** The New Act also includes provisions designed to allow an LLC to protect itself from any claims by creditors of a member, including situations where a creditor claims a security interest in a member's interest in the LLC.
- **Ability to Bar Claims after Dissolution:** Under the New Act, an LLC will have a means to cut off claims of creditors after a certain period of time following the LLC's dissolution. In order to gain such protection, the LLC must: (i) provide notices to known creditors at the time of winding up stating that each creditor must bring any claim it may have by a certain deadline, which cannot be less than 120 days from the effective date of the notice; and/or (ii) publish a notice on the LLC's website (if maintained) and provide a copy of the notice to the Ohio Secretary of State for publishing on its website for the purpose of notifying unknown or potential creditors that any claim not brought by them against the LLC within two years of the publication date will be barred. This ability provides LLCs an opportunity for certainty and repose at the end of its life cycle that did not exist under Ohio's current LLC law.

This Client Alert is only a high-level summary of certain important aspects of the New Act. Accordingly, this Client Alert is not intended to be all encompassing. Tucker Ellis has a team devoted to monitoring the impact of the New Act as well as any additional legislative or other commentary that is published on the subject. Over the next several months leading up to the binding applicability of the New Act on January 1, 2022, Tucker Ellis intends to publish additional materials on specific aspects of the New Act, which will endeavor to take a deeper dive into specific topics included in the New Act as they relate to business-owners and investors. In the

meantime, should you have any questions or need any assistance, please contact the one of the attorneys listed below for more information.

ADDITIONAL INFORMATION

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this state, the name of a limited liability company registered in the office of the secretary of state pursuant to Chapter 1705. or 1706. of the Revised Code, whether domestic or foreign, the name of any limited liability partnership registered in the office of the secretary of state pursuant to Chapter 1775. or 1776. of the Revised Code, whether domestic or foreign, the name of any limited partnership registered in the office of the secretary of state pursuant to Chapter 1782. of the Revised Code, whether domestic or foreign, or a trade name to which the exclusive right at the time in question is registered in the manner provided in Chapter 1329. of the Revised Code, unless there also is filed with the secretary of state, on a form prescribed by the secretary of state, the consent of the other entity or person to the use of the name, evidenced in a writing signed by any authorized officer of the other entity or authorized representative of the other person owning the exclusive right to the registered trade name.

(2) Notwithstanding division (C)(1) of this section, if an application for a license is not acceptable for filing solely because the name of the foreign corporation is not distinguishable from the name of another entity or registered trade name, the foreign corporation may be authorized to transact business in this state by filing with the secretary of state, in addition to those items otherwise prescribed by this section, a statement signed by an authorized officer directing the foreign corporation to make application for a license to transact business in this state under an assumed business name or names that comply with the requirements of this division and stating that the foreign corporation will transact business in this state only under the assumed name or names. The application for a license shall be on a form prescribed by the secretary of state.

Sec. 1706.01. As used in this chapter:

(A) "Articles of organization" means the articles of organization described in section 1706.16 of the Revised Code, and those articles of organization as amended or restated.

(B) "Assignment" means a transfer, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, or transfer by operation of law.

(C) "Constituent limited liability company" means a constituent entity that is a limited liability company.

(D) "Constituent entity" means an entity that is party to a merger.

(E) "Contribution" means anything of value including cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, that a person contributes to a limited liability company, or a series thereof, in the person's capacity as a member.

(F) "Converted entity" means the entity into which a converting entity converts pursuant to sections 1706.72 to 1706.723 of the Revised Code.

(G) "Converting limited liability company" means a converting entity that is a limited liability company.

(H) "Converting entity" means an entity that converts into a converted entity pursuant to sections 1706.72 to 1706.723 of the Revised Code.

(I) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code, a comparable order under a successor statute of general application, or a comparable order under any federal, state, or foreign law governing insolvency.

(J) "Distribution" means a transfer of money or other property from a limited liability

company, or a series thereof, to another person on account of a membership interest.

(K) "Entity" means a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust, cooperative association, or any similar organization that has a governing statute, in each case, whether foreign or domestic.

(L) "Foreign limited liability company" means an entity that is all of the following:

(1) An unincorporated association;

(2) Organized under the laws of a state other than this state or under the laws of a foreign country;

(3) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity;

(4) Not required to be registered, qualified, or organized under any statute of this state other than this chapter.

(M) "Governing statute" means the law that governs an entity's internal affairs.

(N) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed or existing under this chapter.

(O) "Manager" means any person designated by the limited liability company or its members with the authority to manage all or part of the activities or affairs of the limited liability company on behalf of the limited liability company, which person has agreed to serve in such capacity, whether such person is designated as a manager, director, officer, or otherwise.

(P) "Member" means a person that has been admitted as a member of a limited liability company under section 1706.27 of the Revised Code and that has not dissociated as a member.

(Q) "Membership interest" means a member's right to receive distributions from a limited liability company or series thereof.

(R) "Operating agreement" means any valid agreement, written or oral, of the members, or any written declaration of the sole member, as to the affairs and activities of a limited liability company and any series thereof. "Operating agreement" includes any amendments to the operating agreement.

(S) "Organizational documents" means any of the following:

(1) For a general partnership or foreign general partnership, its partnership agreement;

(2) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(3) For a limited liability limited partnership or foreign limited liability limited partnership, its certificate of limited partnership and partnership agreement;

(4) For a limited liability company or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(5) For a business or statutory trust or foreign business or statutory trust, its trust instrument, or comparable records as provided in its governing statute;

(6) For a for-profit corporation or foreign for-profit corporation, its articles of incorporation, regulations, and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute;

(7) For a nonprofit corporation or foreign nonprofit corporation, its articles of incorporation, regulations, and other agreements that are authorized by its governing statute or comparable records as provided in its governing statute;

(8) For a professional association, its articles of incorporation, regulations, and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute;

(9) For any other entity, the basic records that create the entity, determine its internal governance, and determine the relations among the persons that own it, are members of it, or govern it.

(T) "Organizer" means a person executing the initial articles of organization filed by the secretary of state in accordance with section 1706.16 of the Revised Code.

(U) "Person" means an individual, entity, trust, estate, government, custodian, nominee, trustee, personal representative, fiduciary, or any other individual, entity, or series thereof in its own or any representative capacity, in each case, whether foreign or domestic. As used in this division, "government" includes a country, state, county, or other political subdivision, agency, or instrumentality.

(V) "Principal office" means the location specified by a limited liability company, foreign limited liability company, or other entity as its principal office in the last filed record in which the limited liability company, foreign limited liability company, or other entity specified its principal office on the records of the secretary of state. If no such location has previously been specified, then "principal office" means the location reasonably apparent to an unaffiliated person as the principal executive office of the limited liability company, foreign limited liability company, or other entity.

(W) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in written or paper form through an automated process.

(X) "Sign" means, with the present intent to authenticate or adopt a record, either of the following:

(1) To execute or adopt a tangible symbol;

(2) To attach to or logically associate with the record an electronic symbol, sound, or process.

(Y) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(Z) "Surviving entity" means an entity into which one or more other entities are merged, whether the entity pre-existed the merger or was created pursuant to the merger.

(AA) "Tribunal" means a court or, if provided in the operating agreement or otherwise agreed, an arbitrator, arbitration panel, or other tribunal.

Sec. 1706.02. This chapter may be cited as the "Ohio Revised Limited Liability Company Act."

Sec. 1706.03. (A) A person knows a fact when either of the following is met:

(1) The person has actual knowledge of the fact.

(2) The person is deemed to know the fact under law other than this chapter.

(B) A person has notice of a fact when any of the following is met:

(1) The person knows of the fact.

(2) The person receives notification of the fact.

(3) The person has reason to know the fact from all the facts known to the person at the time.

(4) The person is deemed to have notice of the fact under division (D) of this section.

(C) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(D) A person is deemed to have notice of the following:

(1) The matters included in a limited liability company's articles of organization under divisions (A)(1) to (3) of section 1706.16 of the Revised Code, upon the filing of the articles;

(2) A limited liability company's dissolution, ninety days after a certificate of dissolution under section 1706.471 of the Revised Code becomes effective;

(3) A limited liability company's merger or conversion, ninety days after a certificate of merger under section 1706.712 of the Revised Code or certificate of conversion under section 1706.722 of the Revised Code becomes effective.

(E) A member's knowledge, notice, or receipt of a notification of a fact relating to the limited liability company is not knowledge, notice, or receipt of a notification of a fact by the limited liability company solely by reason of the member's capacity as a member.

Sec. 1706.04. (A) A limited liability company is a separate legal entity. A limited liability company's status for tax purposes shall not affect its status as a separate legal entity formed under this chapter.

(B) A limited liability company has perpetual duration.

Sec. 1706.05. (A) A limited liability company may carry on any lawful activity, whether or not for profit.

(B) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its operating agreement, together with any powers incidental thereto, including those powers and privileges necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities of the limited liability company.

(C) Without limiting the general powers enumerated in division (B) of this section, a limited liability company shall have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge, or other swap agreements, or cap, floor, put, call, option, exchange, or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(D) A series established under this chapter has the power and capacity, in the series' own name, to do all of the following:

(1) Sue and be sued;

(2) Contract;

(3) Hold and convey title to assets of the series, including real property, personal property, and intangible property;

(4) Grant liens and security interests in assets of the series.

Sec. 1706.06. (A) This chapter shall be construed to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

(B) Unless displaced by particular provisions of this chapter, principles of law and equity supplement this chapter.

(C) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(D) Sections 1309.406 and 1309.408 of the Revised Code do not apply to any interest in a limited liability company, including all rights, powers, and interests arising under an operating agreement or this chapter. This division prevails over those sections, and is expressly intended to permit the enforcement of the provisions of an operating agreement that would otherwise be ineffective under those sections.

(E) This chapter applies to all limited liability companies equally regardless of whether the limited liability company has one or more members or whether it is formed by a filing under section 1706.16 of the Revised Code or by merger, consolidation, conversion, or otherwise.

Sec. 1706.061. The law of this state governs all of the following:

(A) The organization and internal affairs of a limited liability company;

(B) The liability of a member as a member for the debts, obligations, or other liabilities of a limited liability company;

(C) The authority of the members and agents of a limited liability company;

(D) The availability of the assets of a limited liability company or series thereof for the obligations of the limited liability company or another series thereof.

Sec. 1706.07. (A) The name of a limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C.," "LLC," "limited," "ltd.," or "Ltd".

(B) Except as provided in this section and in sections 1701.75, 1701.78, 1701.82, 1705.36, and 1705.37 of the Revised Code, the secretary of state shall not accept for filing in the secretary of state's office the articles of organization of a limited liability company if the company name set forth in the articles is not distinguishable on the records of the secretary of state from the name of any of the following:

(1) Any other limited liability company, whether the name is of a domestic limited liability company or of a foreign limited liability company registered as a foreign limited liability company under this chapter;

(2) Any corporation, whether the name is of a domestic corporation or of a foreign corporation holding a license as a foreign corporation under the laws of this state pursuant to Chapter 1701., 1702., or 1703. of the Revised Code;

(3) Any limited liability partnership, whether the name is of a domestic limited liability partnership or a foreign limited liability partnership registered pursuant to Chapter 1775. or 1776. of the Revised Code;

(4) Any limited partnership, whether the name is of a domestic limited partnership or a foreign limited partnership registered pursuant to Chapter 1782. of the Revised Code;

(5) Any trade name to which the exclusive right, at the time in question, is registered in the office of the secretary of state pursuant to Chapter 1329. of the Revised Code.

(C) A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from the names identified in division (B) of of this section if there also is filed in the office of the secretary of state, on a form prescribed by the secretary of state, the consent of the other person or, in the case of a registered trade name, the person in whose name is registered the exclusive right to use the name, which consent is evidenced in a writing signed by any

authorized officer or any authorized representative of the other person.

(D) If a judicial sale or other transfer by order of a tribunal involves the right to use the name of a limited liability company or of a foreign limited liability company, then division (B) of this section shall not be applicable with respect to any person that is subject to the order.

(E) Any person that wishes to reserve a name for a proposed new limited liability company, a limited liability company that intends to change its name, or an assumed name for a foreign limited liability company whose name is not available may submit to the secretary of state, on a form prescribed by the secretary of state, a written application for the exclusive right to use a specified name as the name of the company. If the secretary of state finds, consistent with this section, that the specified name is available for use, the secretary of state shall file the application. From the date of the filing, the applicant has the exclusive right for one hundred eighty days to use the specified name as the name of the limited liability company, counting the date of the filing as the first of the one hundred eighty days. The right so obtained may be transferred by the applicant or other holder of the right by filing in the office of the secretary of state a written transfer, on a form prescribed by the secretary of state, that states the name and address of the transferee.

Sec. 1706.08. (A) Except as otherwise provided in divisions (B) and (C) of this section, both of the following apply:

(1) An operating agreement governs relations among the members as members and between the members and the limited liability company.

(2) To the extent that an operating agreement does not otherwise provide for a matter described in division (A)(1) of this section, this chapter governs the matter.

(B)(1) To the extent that, at law or in equity, a member, manager, or other person has duties, including fiduciary duties, to the limited liability company, or to another member or to another person that is a party to or is otherwise bound by an operating agreement, those duties may be expanded or restricted or eliminated by a written operating agreement. However, an operating agreement may not eliminate the implied covenant of good faith and fair dealing.

(2) A written operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including breach of fiduciary duties, of a member, manager, or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by an operating agreement. However, an operating agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing.

(3) A member, manager, or other person shall not be liable to a limited liability company or to another member or to another person that is a party to or is otherwise bound by an operating agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the operating agreement.

(4) An operating agreement may provide either or both of the following:

(a) That, a member or assignee who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences;

(b) That at the time or upon the happening of events specified in the operating agreement, a member or assignee may be subject to specified penalties or consequences.

(5) A penalty or consequence that may be specified under division (B)(4) of this section may include any of the following:

(a) Reducing or eliminating the defaulting member's or assignee's proportionate interest in a limited liability company;

(b) Subordinating the member's or assignee's membership interest to that of nondefaulting members or assignees;

(c) Forcing a sale of the member's or assignee's membership interest;

(d) Forfeiting the defaulting member's or assignee's membership interest;

(e) The lending by other members or assignees of the amount necessary to meet the defaulting member's or assignee's commitment;

(f) A fixing of the value of the defaulting member's or assignee's membership interest by appraisal or by formula and redemption or sale of the membership interest at that value;

(g) Any other penalty or consequence.

(C) An operating agreement shall not do any of the following:

(1) Vary the nature of the limited liability company as a separate legal entity under division (A) of section 1706.04 of the Revised Code;

(2) Except as otherwise provided in division (B) of section 1706.082 of the Revised Code, restrict the rights under this chapter of a person other than a member, dissociated member, or assignee;

(3) Vary the power of a court under section 1706.171 of the Revised Code;

(4) Eliminate the implied covenant of good faith and fair dealing;

(5) Eliminate or limit the liability of a member or other person for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing;

(6) Waive the requirements of division (A) of section 1706.281 of the Revised Code;

(7) Waive the prohibition on issuance of a certificate of a membership interest in bearer form under division (D) of section 1706.341 of the Revised Code;

(8) Waive the requirements of division (B) of section 1706.761 of the Revised Code.

Sec. 1706.081. (A) A limited liability company is bound by and may enforce its operating agreement, whether or not the limited liability company has itself manifested assent to its operating agreement.

(B) A person that is admitted as a member of a limited liability company becomes a party to and assents to the operating agreement subject to division (A) of section 1706.281 of the Revised Code.

(C) Two or more persons intending to be the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become its operating agreement. One person intending to be the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

(D) The operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement.

Sec. 1706.082. (A) An operating agreement may be amended upon the consent of all the

members of a limited liability company or in such other manner authorized by the operating agreement. If an operating agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the operating agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law; except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended.

(B) An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.

(C) The obligations of a limited liability company and its members to a person in the person's capacity as an assignee or dissociated member are governed by the operating agreement. An assignee and dissociated member are bound by the operating agreement.

Sec. 1706.09. (A) Each limited liability company and foreign limited liability company that has an effective registration as a foreign limited liability company under section 1706.511 of the Revised Code shall maintain continuously in this state an agent for service of process on the company. The agent shall be one of the following:

(1) A natural person who is a resident of this state;

(2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state. If the agent is an entity other than a domestic corporation, the agent shall meet the requirements of Title XVII of the Revised Code for an entity of the agent's type to transact business or exercise privileges in this state.

(B)(1) The secretary of state shall not accept original articles of organization of a limited liability company or an original registration of a foreign limited liability company for filing unless both of the following accompany the articles or registration:

(a) A written appointment of an agent as described in division (A) of this section that is signed by an authorized representative of the limited liability company or foreign limited liability company;

(b) A written acceptance of the appointment that is signed by the designated agent on a form prescribed by the secretary of state.

(2) In cases not covered by division (B)(1) of this section, the company shall appoint the agent described in division (A) of this section and shall file with the secretary of state, on a form prescribed by the secretary of state, a written appointment of that agent that is signed by an authorized representative of the company and a written acceptance of the appointment that is signed by the designated agent.

(C) The written appointment of an agent shall set forth the name and address in this state of the agent, including the street and number or other particular description, and shall otherwise be in such form as the secretary of state prescribes. The secretary of state shall keep a record of the names of limited liability companies and foreign limited liability companies, and the names and addresses of their respective agents.

(D) If any agent described in division (A) of this section dies, resigns, or moves outside of this state, the limited liability company or foreign limited liability company shall appoint forthwith

another agent and file with the secretary of state, on a form prescribed by the secretary of state, a written appointment of the agent and acceptance of appointment as described in division (B)(2) of this section.

(E) If the agent described in division (A) of this section changes the agent's address from the address stated in the records of the secretary of state, the agent or the limited liability company or foreign limited liability company shall file forthwith with the secretary of state, on a form prescribed by the secretary of state, a written statement setting forth the new address.

(F) An agent described in division (A) of this section may resign by filing with the secretary of state, on a form prescribed by the secretary of state, a written notice of resignation that is signed by the agent and by mailing a copy of that notice to the limited liability company or foreign limited liability company at the current or last known address of its principal office. The notice shall be mailed to the company on or prior to the date that the notice is filed with the secretary of state and shall set forth the name of the company, the name and current address of the agent, the current or last known address, including the street and number or other particular description, of the company's principal office, a statement of the resignation of the agent, and a statement that a copy of the notice has been sent to the company within the time and in the manner specified in this division. The authority of the resigning agent terminates thirty days after the filing of the notice with the secretary of state.

(G) A limited liability company or foreign limited liability company may revoke the appointment of its agent described in division (A) of this section by filing with the secretary of state, on a form prescribed by the secretary of state, a written appointment of another agent and an acceptance of appointment in the manner described in division (B)(2) of this section and a statement indicating that the appointment of the former agent is revoked.

(H)(1) Any legal process, notice, or demand required or permitted by law to be served upon a limited liability company may be served upon the company as follows:

(a) By delivering a copy of the process, notice, or demand to the address of the agent in this state as contained in the records of the secretary of state;

(b) If the agent described in division (A) of this section is a natural person, by delivering a copy of the process, notice, or demand to the agent.

(2) If the agent described in division (A) of this section cannot be found or no longer has the address that is stated in the records of the secretary of state or the limited liability company or foreign limited liability company has failed to maintain an agent as required by this section and if the party or the agent or representative of the party that desires service of the process, notice, or demand files with the secretary of state an affidavit that states that one of those circumstances exists and states the most recent address of the company that the party who desires service has been able to ascertain after a diligent search, then the service of the process, notice, or demand upon the secretary of state as the agent of the company may be initiated by delivering to the secretary of state four copies of the process, notice, or demand accompanied by a fee of five dollars. The secretary of state shall give forthwith notice of that delivery to the company at either its principal office as shown upon the secretary of state's records or at any different address specified in the affidavit of the party desiring service and shall forward to the company at either address by certified mail, return receipt requested, a copy of the process, notice, or demand. Service upon the company is made when the secretary of

state gives the notice and forwards the process, notice, or demand as set forth in division (H)(2) of this section.

(I) The secretary of state shall keep a record of each process, notice, and demand that pertains to a limited liability company or foreign limited liability company and that is delivered to the secretary of state's office under this section or another law of this state that authorizes service upon the secretary of state in connection with a limited liability company or foreign limited liability company. In that record, the secretary of state shall record the time of each delivery of that type and the secretary of state's subsequent action with respect to the process, notice, or demand.

(J) This section does not limit or affect the right to serve any process, notice, or demand upon a limited liability company or foreign limited liability company in any other manner permitted by law.

(K) A written appointment of an agent or a written statement filed by a limited liability company or foreign limited liability company with the secretary of state shall be signed by an authorized representative of the company.

(L) Upon the failure of a limited liability company or foreign limited liability company to continuously maintain a statutory agent or file a change of name or address of a statutory agent, the secretary of state shall give notice thereof by ordinary or electronic mail to the company at the electronic mail address provided to the secretary of state, or at the address set forth in the notice of resignation. Unless the default is cured within thirty days after the mailing by the secretary of state of the notice or within any further period of time that the secretary of state grants, upon the expiration of that period of time from the date of the mailing, the articles of the limited liability company or the registration of the foreign limited liability company shall be canceled without further notice or action by the secretary of state. The secretary of state shall make a notation of the cancellation on the secretary of state's records.

A limited liability company or foreign limited liability company whose articles or registration has been canceled may be reinstated by filing, on a form prescribed by the secretary of state, an application for reinstatement and the required appointment of agent or required statement, and by paying the filing fee specified in division (Q) of section 111.16 of the Revised Code. The rights and privileges of a limited liability company or foreign limited liability company whose articles or registration has been reinstated are subject to section 1706.46 of the Revised Code. The secretary of state shall furnish the tax commissioner a monthly list of all limited liability companies and foreign limited liability companies canceled and reinstated under this division.

Sec. 1706.16. (A) In order to form a limited liability company, one or more persons shall execute articles of organization and deliver the articles to the secretary of state for filing. The articles of organization shall set forth all of the following:

(1) The name of the limited liability company;

(2) The name and street address of the limited liability company's statutory agent and a written acceptance of the appointment that is signed by the agent;

(3) If applicable, a statement as provided in division (B)(3) of section 1706.761 of the Revised Code;

(4) Any other matters the organizers or the members determine to include in the articles of organization.

(B) A limited liability company is formed when the articles of organization are filed by the secretary of state or at any later date or time specified in the articles of organization.

(C) The fact that articles of organization are on file in the office of the secretary of state is notice of the matters required to be included by divisions (A)(1) to (3) of this section, but is not notice of any other fact.

(D) An operating agreement may be entered into before, at the time of, or after the filing of the articles of organization. Regardless of when the operating agreement is entered into, it may be made effective as of the filing of the articles of organization or any other time provided in the operating agreement.

Sec. 1706.161. (A) The articles of organization may be amended at any time.

(B) The articles of organization may be restated with or without amendment at any time.

(C) To amend its articles of organization, a limited liability company shall deliver to the secretary of state for filing, on a form prescribed by the secretary of state, a certificate of amendment containing both of the following information:

(1) The name and registration number of the limited liability company;

(2) The changes the amendment makes to the articles of organization as most recently amended or restated.

(D) Restated articles of organization shall be delivered to the secretary of state for filing in the same manner as an amendment. Restated articles of organization shall be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's name and the date of the filing of its articles of organization. Any amendment or change effected in connection with the restatement of the articles of organization shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change.

(E) The original articles of organization, as amended or supplemented, shall be superseded by the restated articles of organization. Thereafter, the articles of organization, including any further amendment or changes made thereby, shall be the articles of organization of the limited liability company, but the original effective date of formation shall remain unchanged.

Sec. 1706.17. (A) A record delivered to the secretary of state for filing pursuant to this chapter shall be signed as provided by this section.

(1) A limited liability company's initial articles of organization shall be signed by at least one person.

(2) A record signed on behalf of a limited liability company shall be signed by a person authorized by the limited liability company.

(3) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the limited liability company's activities under division (A) of section 1706.472 of the Revised Code or a person appointed under division (B) of section 1706.472 of the Revised Code to wind up those activities.

(4) A statement of denial by a person under section 1706.20 of the Revised Code shall be signed by that person.

(5) Any other record shall be signed by the person on whose behalf the record is delivered to the secretary of state.

(B) Any record to be filed under this chapter may be signed by an agent, including an attorney-in-fact. Powers of attorney relating to the signing of the record need not be delivered to the secretary of state.

Sec. 1706.171. (A) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved by that failure to sign may petition the appropriate court to order any of the following:

- (1) The person to sign the record;
- (2) The person to deliver the record to the secretary of state for filing;
- (3) The secretary of state to file the record unsigned.

(B) If a petitioner under division (A) of this section is not the limited liability company or foreign limited liability company to whom the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action. A person aggrieved under division (A) of this section may seek the remedies provided in that division in a separate action against the person required to sign the record or as a part of any other action concerning the limited liability company in which the person required to sign the record is made a party.

(C) A record filed unsigned pursuant to this section is effective without being signed.

(D) A court may award reasonable expenses, including reasonable attorney's fees, to the prevailing party, in whole or in part, with respect to any claim made under division (A) of this section.

Sec. 1706.172. (A) Each record authorized or required to be delivered to the secretary of state for filing under this chapter shall meet all of the following requirements:

(1) The record shall contain all information required by the law of this state to be contained in the record but, unless otherwise provided by law, shall not be required to contain other information.

(2) The record shall be on or in a medium and in such form acceptable to the secretary of state and from which the secretary of state may create a record that contains all of the information stated in the record. The secretary of state may require that the record be delivered by any one or more means or on or in any one or more media acceptable to the secretary of state. The secretary of state is not required to file a record that is not delivered by a means and in a medium that complies with the requirements then established by the secretary of state for the delivery and filing of records. If the secretary of state permits a record to be delivered on paper, the record shall be typewritten or machine printed, and the secretary of state may impose reasonable requirements upon the dimensions, legibility, quality, and color of the paper and typewriting or printing and upon the format and other attributes of any record that is delivered electronically. The secretary of state shall, at the earliest practicable time, allow for the delivery of a record for filing to be accomplished electronically, without the necessity for the delivery of a physical original record or the image thereof, if all required information is delivered and is readily retrievable from the data delivered. If the delivery of a record for filing is required to be accomplished electronically, that record shall not be accompanied by any physical record unless the secretary of state permits that accompaniment.

(3) The record shall be in English. A person's name set forth in the record need not be in English if expressed in English letters or Arabic or Roman numerals. Records of a foreign person need not be in English if accompanied by a reasonably authenticated English translation.

(B) Unless the secretary of state determines that a record does not comply with the filing

requirements of this chapter, the secretary of state shall file the record and send a certificate and a receipt for the fees to the person who submitted the record.

(C) Upon request and payment of the requisite fee, the secretary of state shall furnish to the requester a certified copy of a requested record.

(D) Except as otherwise provided in division (F) of section 1706.09 and section 1706.173 of the Revised Code, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date of not more than ninety days following the date of receipt by the secretary of state. Subject to division (F) of section 1706.09 and section 1706.173 of the Revised Code, a record filed by the secretary of state is effective as follows:

(1) If the record does not specify an effective time and does not specify a delayed effective date, on the date the record is filed as evidenced by the secretary of state's endorsement of the date on the record;

(2) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of the following:

(a) The specified date;

(b) The ninetieth day after the record is filed.

(4) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of the following:

(a) The specified date;

(b) The ninetieth day after the record is filed.

Sec. 1706.173. (A) A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a certificate of correction to correct a record previously delivered by the limited liability company or foreign limited liability company to the secretary of state and filed by the secretary of state if at the time of filing the record contained incorrect or inaccurate information or was defectively signed.

(B) A certificate of correction under division (A) of this section shall not state a delayed effective date and shall do all of the following:

(1) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(2) Specify the inaccurate information or the defect in the signing;

(3) Correct the incorrect or inaccurate information or defective signature.

(C) When filed by the secretary of state, a certificate of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons that previously relied on the uncorrected record and would be adversely affected by the correction.

Sec. 1706.174. (A) A person who signs a record authorized or required to be filed under this chapter thereby affirms under penalty for falsification as described in section 2921.13 of the Revised Code that the facts stated in the record are true in all material respects.

(B) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains incorrect or inaccurate information, a person that suffers a loss by

reasonable reliance on the information may recover damages for the loss from a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be incorrect or inaccurate at the time the record was signed.

Sec. 1706.175. (A) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of full force and effect for a limited liability company if the records filed in the office of the secretary of state show that the limited liability company has been formed under the laws of this state. A certificate of full force and effect shall state all of the following:

(1) The limited liability company's name;

(2) The limited liability company's date of formation;

(3) That the limited liability company is in full force and effect on the records of the secretary of state.

(B) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of registration for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of registration for the foreign limited liability company, has not canceled the certificate of registration for the foreign limited liability company, and has not filed a statement of cancellation of the certificate of registration for the foreign limited liability company. A certificate of registration shall state both of the following:

(1) The foreign limited liability company's name;

(2) That the foreign limited liability company is authorized to transact business in this state.

(C) Subject to any qualification stated in the certificate, a certificate of existence or certificate of registration issued by the secretary of state is, for a period of thirty days after the date of such certificate, conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Sec. 1706.18. No person shall have the power to bind the limited liability company, or a series thereof, except:

(A) To the extent the person is authorized to act as the agent of the limited liability company or a series thereof under or pursuant to the operating agreement;

(B) To the extent the person is authorized to act as the agent of the limited liability company or a series thereof pursuant to division (A) of section 1706.30 of the Revised Code;

(C) To the extent provided in section 1706.19 of the Revised Code;

(D) To the extent provided by law other than this chapter.

Sec. 1706.19. (A) A limited liability company, on behalf of itself or a series thereof, may deliver to the secretary of state for filing on a form prescribed by the secretary of state a statement of authority. Such a statement:

(1) Shall include the name and registration number of the limited liability company;

(2) May state the authority of a specific person, or, with respect to any position that exists in or with respect to the limited liability company or series thereof, of all persons holding the position, to enter into transactions on behalf of the limited liability company or series thereof.

(B) To amend or cancel a statement of authority filed by the secretary of state, a limited liability company shall, on behalf of itself or a series thereof, deliver to the secretary of state for filing an amendment or cancellation on a form prescribed by the secretary of state stating all of the

following:

(1) The name and registration number of the limited liability company;

(2) The date of filing of the statement of authority to which the amendment or cancellation statement pertains;

(3) The contents of the amendment or a declaration that the statement to which it pertains is canceled.

(C) An effective statement of authority is conclusive in favor of a person that gives value in reliance on the statement, except to the extent that when the person gives value the person has knowledge to the contrary.

(D) Upon filing, a certificate of dissolution filed pursuant to division (B)(1) of section 1706.471 of the Revised Code operates as a cancellation, under division (B) of this section, of each statement of authority.

(E) After a certificate of dissolution becomes effective, a limited liability company may, on behalf of itself or a series thereof, deliver to the secretary of state for filing a statement of authority that is designated as a post-dissolution or post-cancellation statement of authority.

(F) Upon filing, a statement of denial filed pursuant to section 1706.20 of the Revised Code operates as an amendment, under division (B) of this section, of the statement of authority to which the statement of denial pertains.

Sec. 1706.20. A person named in a filed statement of authority may deliver to the secretary of state for filing on a form prescribed by the secretary of state a statement of denial that does both of the following:

(A) States the name and registration number of the limited liability company and the date of filing of the statement of authority to which the statement of denial pertains;

(B) Denies the person's authority.

Sec. 1706.26. A person who is a member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise; or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof. The failure of a limited liability company or any of its members to observe any formalities relating to the exercise of the limited liability company's powers or the management of its activities is not a factor to consider in, or a ground for, imposing liability on the members for the debts, obligations, or liability of the limited liability company.

Sec. 1706.27. (A) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the occurrence of either of the following:

(1) If the organizer was authorized by one or more persons intending to be members of the limited liability company to file the articles of organization on their behalf, the formation of the limited liability company;

(2) If the organizer was not authorized by any other person intending to be members of the limited liability company, each organizer shall have the authority of a member of the limited liability company upon the formation of the limited liability company until the admission of the initial member of the limited liability company.

(B) After formation of a limited liability company, a person may be admitted as a member of

the limited liability company in any of the following manners:

(1) As provided in the operating agreement;

(2) As the result of a transaction effective under sections 1706.71 to 1706.74 of the Revised Code;

(3) With the consent of all the members or in the case of a limited liability company having only one member, the consent of the member;

(4) If, within ninety consecutive days after the occurrence of the dissociation of the last remaining member, both of the following occur:

(a) All holders of the membership interest last assigned by the last person to have been a member consent to the designation of a person to be admitted as a member;

(b) The designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member.

(C) A person may be admitted as a member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company. A person may be admitted as the sole member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company.

Sec. 1706.28. A contribution of a member to a limited liability company, or a series thereof, may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

Sec. 1706.281. (A) A promise by a member to make a contribution to a limited liability company, or a series thereof, is not enforceable unless set forth in a writing signed by the member.

(B) A member's obligation to make a contribution to a limited liability company, or a series thereof, is not excused by the member's death, disability, or other inability to perform personally. If a member does not make a contribution required by an enforceable promise, the member or the member's estate is obligated, at the election of the limited liability company, or a series thereof, to contribute money equal to the value of the portion of the contribution that has not been made. The election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company, or a series thereof, may have under the operating agreement or applicable law.

(C)(1) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(2) The obligation of a member associated with a series to make a contribution to the series may be compromised only by consent of all the members associated with that series. A conditional obligation of a member to make a contribution to a series may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.

(3) Division (C)(1) of this section shall not apply to a member's obligation to make a contribution to a series of a limited liability company.

Sec. 1706.29. (A)(1) All members shall share equally in any distributions made by a limited liability company before its dissolution and winding up.

(2) A member has a right to a distribution before the dissolution and winding up of a limited liability company as provided in the operating agreement. A decision to make a distribution before the dissolution and winding up of the limited liability company is a decision in the ordinary course of activities of the limited liability company. A member's dissociation does not entitle the dissociated member to a distribution.

(3) A member does not have a right to demand and receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in division (C) of section 1706.475 of the Revised Code, a limited liability company may distribute an asset in kind if each member receives a percentage of the asset in proportion to the member's share of contributions.

(4) If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

(B)(1) All members associated with a series shall share equally in any distributions made by the series before its dissolution and winding up.

(2) A member associated with a series has a right to a distribution before the dissolution and winding up of the series as provided in the operating agreement. A decision of the series to make a distribution before the dissolution and winding up of the series is a decision in the ordinary course of activities of the series. A member's dissociation from a series with which the member is associated does not entitle the dissociated member to a distribution from the series.

(3) A member associated with a series does not have a right to demand and receive a distribution from the series in any form other than money. Except as otherwise provided in division (C) of section 1706.7613 of the Revised Code, a series may distribute an asset in kind if each member associated with the series receives a percentage of the asset in proportion to the member's share of distributions from the series.

(4) If a member associated with a series becomes entitled to receive a distribution from the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

(C) Division (A) of this section does not apply to a distribution made by a series.

Sec. 1706.30. (A)(1) The activities and affairs of the limited liability company shall be under the direction, and subject to the oversight, of its members.

(2) The activities and affairs of a series shall be under the direction, and subject to the oversight, of the members associated with the series.

(3) Division (A)(1) of this section shall not apply to the activities and affairs of a series.

(B)(1) Except as provided in division (C) of this section, a matter in the ordinary course of activities of the limited liability company may be decided by a majority of the members.

(2) Except as provided in division (C) of this section, a matter in the ordinary course of activities of a series may be decided by a majority of the members associated with the series.

(3) Division (B)(1) of this section shall not apply to matters of a series.

(C)(1) The consent of all members is required to do any of the following:

(a) Amend the operating agreement;

(b) File a petition of the limited liability company for relief under Title 11 of the United States Code, or a successor statute of general application, or a comparable federal, state, or foreign law governing insolvency;

(c) Undertake any act outside the ordinary course of the limited liability company's activities;

(d) Undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all members.

(2) The consent of all members associated with a series is required to do either of the following:

(a) Undertake any act outside the ordinary course of the series' activities;

(b) Undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all the members associated with a series.

(D) Any matter requiring the consent of members may be decided without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(E) This chapter does not entitle a member to remuneration for services performed for a limited liability company.

Sec. 1706.31. (A) Unless either a written operating agreement for the limited liability company or a written agreement with a member establishes additional fiduciary duties, in the event that there have been designated one or more managers to supervise or manage the activities or affairs of the limited liability company, the only obligation a member owes, in the member's capacity as a member, to the limited liability company and the other members is to discharge the member's duties and obligations under this chapter and the operating agreement in accordance with division (E) of this section. Divisions (C) and (D) of this section shall not apply to such a member.

(B) Unless either a written operating agreement for the limited liability company or a written agreement with a member establishes additional fiduciary duties or the duties of the member have been modified, waived, or eliminated as contemplated by section 1706.08 of the Revised Code, in the event that there have not been designated one or more managers to supervise or manage the activities of the limited liability company, the only fiduciary duties a member owes to the limited liability company and the other members is the duty of loyalty and the duty of care set forth in divisions (C) and (D) of this section.

(C) A member's duty of loyalty to the limited liability company and the other members is limited to the following:

(1) To account to the limited liability company and hold for it any property, profit, or benefit derived by the member in the conduct and winding up of the limited liability company business or derived from a use by the member of limited liability company property or from the appropriation of a limited liability company opportunity;

(2) To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

(D) A member's duty of care to the limited liability company and the other members in the conduct and winding up of the limited liability company business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of

law.

(E) A member shall discharge the member's duties to the limited liability company and the other members under this chapter and under the operating agreement and exercise any rights consistent with the implied covenant of good faith and fair dealing.

(F) A member does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(G) All the members of a limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty. It is a defense to a claim under division (C)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. If, as permitted, by this division or the limited liability company's operating agreement, a member enters into a transaction with a limited liability company that otherwise would be prohibited by division (C) (2) of this section, the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(H) This section applies to a person winding up the limited liability company business as the personal or legal representative of the last surviving member as if the person were a member.

Sec. 1706.311. (A) Unless either a written operating agreement for the limited liability company or a written agreement with a manager establishes additional fiduciary duties or the duties of the manager have been modified, waived, or eliminated as contemplated by section 1706.08 of the Revised Code, the only fiduciary duties of a manager to the limited liability company or its members are the duty of loyalty and the duty of care set forth in divisions (B) and (C) of this section.

(B) A manager's duty of loyalty to the limited liability company and its members is limited to the following:

(1) To account to the limited liability company and hold for it any property, profit, or benefit derived by the manager in the conduct and winding up of the limited liability company business or derived from a use by the manager of limited liability company property or from the appropriation of a limited liability company opportunity;

(2) To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

(C) A manager's duty of care to the limited liability company in the conduct and winding up of the limited liability company activities is limited to acting in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the limited liability company.

(D) For purposes of division (C) of this section, both of the following apply:

(1) A manager of a limited liability company shall not be determined to have violated the manager's duties under division (C) of this section unless it is proved that the manager has not acted in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the limited liability company.

(2) A manager shall not be considered to be acting in good faith if the manager has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by any of the persons described in section 1706.331 of the Revised Code to be unwarranted.

(E) A manager shall be liable for monetary relief for a violation of the manager's duties under division (C) of this section only if it is proved that the manager's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the limited liability company or undertaken with reckless disregard for the best interests of the company. This division does not apply if, and only to the extent that, at the time of a manager's act or omission that is the subject of complaint, either of the following is true:

(1) The articles or the operating agreement of the limited liability company state by specific reference to division (E) of this section that the provisions of this division do not apply to the limited liability company.

(2) A written agreement between the manager and the limited liability company states by specific reference to division (E) of this section that the provisions of this division do not apply to the manager.

(F) All the members of a limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty. It is a defense to a claim under division (B)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. If, as permitted by this division or the operating agreement, a manager enters into a transaction with the limited liability company that otherwise would be prohibited by division (B)(2) of this section, the manager's rights and obligations arising from the transaction are the same as those of a person that is not a manager.

(G) A manager shall discharge the duties to the limited liability company and the members under this chapter and under the operating agreement and exercise any rights consistently with the implied covenant of good faith and fair dealing.

(H) Nothing in this section affects the duties of a manager who acts in any capacity other than the manager's capacity as a manager. If a manager of a limited liability company also is a member of the limited liability company, the actions taken in the capacity as a member of the limited liability company shall be subject to section 1706.31 of the Revised Code. Nothing in this section affects any contractual obligations of a manager to the limited liability company.

Sec. 1706.32. A limited liability company, or a series thereof, may indemnify and hold harmless a member or other person, pay in advance or reimburse expenses incurred by a member or other person, and purchase and maintain insurance on behalf of a member or other person.

Sec. 1706.33. (A) Upon reasonable notice provided to the limited liability company, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(B) A limited liability company may charge a person that makes a demand under this section the reasonable costs of labor and materials for copying.

(C) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under division (E) of this section applies both to the agent or legal representative and the member or dissociated member.

(D) The rights under this section do not extend to an assignee who is not admitted as a member.

(E) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may do either of the following:

(1) Impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient;

(2) Keep confidential from the members and any other persons, for such period of time as the limited liability company deems reasonable, any information that the limited liability company reasonably believes to be in the nature of trade secrets or other information the disclosure of which the limited liability company in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its activities, or that the limited liability company is required by law or by agreement with a third party to keep confidential.

Sec. 1706.331. Each member and agent of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports, or statements presented by another member or agent of the limited liability company, or by any other person as to matters the member or the agent reasonably believes are within that other person's professional or expert competence, including information, opinions, reports, or statements as to any of the following:

(A) The value and amount of the assets, liabilities, profits, or losses of the limited liability company, or a series thereof;

(B) The value and amount of assets or reserves or contracts, agreements, or other undertakings that would be sufficient to pay claims and obligations of the limited liability company, or series thereof, or to make reasonable provision to pay those claims and obligations;

(C) Any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

Sec. 1706.332. If a member dies, the deceased member's personal representative or other legal representative may, for purposes of settling the estate, exercise the rights of a current member under section 1706.33 of the Revised Code.

Sec. 1706.34. The only interest of a member that is assignable is the member's membership interest. A membership interest is personal property.

Sec. 1706.341. (A) An assignment, in whole or in part, of a membership interest:

(1) Is permissible;

(2)(a) Does not by itself cause a member to cease to be a member of the limited liability company;

(b) Does not by itself cause a member to cease to be associated with a series of the limited liability company.

(3) Does not by itself cause a dissolution and winding up of the limited liability company, or a series thereof;

(4) Subject to section 1706.332 of the Revised Code, does not entitle the assignee to do either of the following:

(a) Participate in the management or conduct of the activities of the limited liability company, or a series thereof;

(b) Have access to records or other information concerning the activities of the limited liability company, or a series thereof.

(B) An assignee has the right to receive, in accordance with the assignment, distributions to which the assignor would otherwise be entitled.

(C) A membership interest may be evidenced by a certificate of membership interest issued by the limited liability company, or a series thereof. An operating agreement may provide for the assignment of the membership interest represented by the certificate and make other provisions with respect to the certificate.

(D) A limited liability company, or a series thereof, shall not issue a certificate of membership interest in bearer form.

(E) A limited liability company, or a series thereof, need not give effect to an assignee's rights under this section until the limited liability company, or a series thereof, has notice of the assignment.

(F) Except as otherwise provided in division (J) of section 1706.411 of the Revised Code, when a member assigns a membership interest, the assignor retains the rights of a member other than the right to distributions assigned and retains all duties and obligations of a member.

(G) When a member assigns a membership interest to a person that is admitted as a member with respect to the assigned interest, the assignee is only liable for the member's obligations under section 1706.281 of the Revised Code to the extent that the obligations are known to the assignee when the assignee voluntarily accepts admission as a member.

Sec. 1706.342. (A) On application to a court of competent jurisdiction by any judgment creditor of a member or assignee, the court may charge the membership interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged and after the limited liability company has been served with the charging order, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the membership interest.

(B) After the limited liability company is served with a charging order, the limited liability company or any member shall be entitled to pay to or deposit with the clerk of the court so issuing the charging order any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the charged membership interest, and the payment or deposit shall discharge the limited liability company and the judgment debtor from liability for the amount so paid or deposited and any interest that might accrue thereon. Upon receipt of the payment or deposit, the clerk of the court shall notify the judgment creditor of the receipt of the payment or deposit. The judgment creditor shall, after any payment or deposit into the court, petition the court for payment of so much of the amount paid or deposited as may be necessary to pay the judgment creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the judgment creditor, the excess amounts paid or deposited shall be distributed to the judgment debtor, and the charging order shall be extinguished. The court may, in its discretion, order the clerk to deposit, pending the judgment creditor's petition, any money paid or deposited with the clerk, in an interest bearing account at a bank authorized to receive deposits of public funds.

(C) A charging order constitutes a lien on the judgment debtor's membership interest.

(D) Subject to division (C) of this section, both of the following apply:

(1) A judgment debtor that is a member retains the rights of a member and remains subject to all duties and obligations of a member.

(2) A judgment debtor that is an assignee retains the rights of an assignee and remains subject to all duties and obligations of an assignee.

(E) This chapter does not deprive any member or assignee of the benefit of any exemption laws applicable to the member's or assignee's membership interest.

(F) This section provides the sole and exclusive remedy by which a judgment creditor of a member or assignee may satisfy a judgment out of the judgment debtor's membership interest, and the judgment creditor shall have no right to foreclose, under this chapter or any other law, upon the charging order, the charging order lien, or the judgment debtor's membership interest. A judgment creditor of a member or assignee has no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the judgment debtor's membership interest or the property of a limited liability company. Court orders for actions or requests for accounts and inquiries that the judgment debtor might have made to the limited liability company are not available to a judgment creditor attempting to satisfy the judgment out of the judgment debtor's membership interest and may not be ordered by a court.

Sec. 1706.41. (A) A person shall not voluntarily dissociate from a limited liability company.

(B) A person's dissociation from a limited liability company is wrongful only if one of the following applies:

(1) The dissociation is in breach of an express provision of the operating agreement.

(2) The person is expelled as a member by a determination of a tribunal under division (D) of section 1706.411 of the Revised Code.

(3) The person is dissociated by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors.

(C) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 1706.61 of the Revised Code, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member to the limited liability company or the other members.

Sec. 1706.411. A person is dissociated as a member from a limited liability company in any of the following circumstances:

(A) An event stated in the operating agreement as causing the person's dissociation occurs.

(B) The person is expelled as a member pursuant to the operating agreement.

(C) The person is expelled as a member by the unanimous consent of the other members if any of the following apply:

(1) It is unlawful to carry on the limited liability company's activities with the person as a member.

(2) The person is an entity and, within ninety days after the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, or its right to transact business has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to transact business has not been reinstated.

(3) The person is an entity and, within ninety days after the limited liability company notifies the person that it will be expelled as a member because the person has been dissolved and its activities are being wound up, the entity has not been reinstated or the dissolution and winding up have not been revoked or canceled.

(D) On application by the limited liability company, the person is expelled as a member by tribunal order for any of the following reasons:

(1) The person has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company's activities.

(2) The person has willfully or persistently committed, or is willfully or persistently committing, a material breach of the operating agreement or the person's duties or obligations under this chapter or other applicable law.

(3) The person has engaged, or is engaging, in conduct relating to the limited liability company's activities that makes it not reasonably practicable to carry on the activities with the person as a member.

(E) In the case of a person who is an individual, the person dies, a guardian or general conservator is appointed for the person, or a tribunal determines that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement.

(F) The person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property. This division shall not apply to a person who is the sole remaining member of a limited liability company.

(G) In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire membership interest in the limited liability company is distributed, but not solely by reason of the substitution of a successor trustee.

(H) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire membership interest in the limited liability company is distributed, but not solely by reason of the substitution of a successor personal representative.

(I) In the case of a member that is not an individual, the legal existence of the person otherwise terminates.

(J) There has been an assignment of all of the person's membership interest other than an assignment for security purposes.

Sec. 1706.412. (A) A person who has dissociated as a member shall have no right to participate as a member in the activities and affairs of the limited liability company and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated.

(B) Upon a person's dissociation, the member's duty of loyalty and duty of care under divisions (C) and (D) of section 1706.31 of the Revised Code continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the limited liability company's business pursuant to section 1706.472 of the Revised Code.

(C) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or liability to a limited liability company or the other members that the person incurred while a member.

Sec. 1706.46. (A) Except as otherwise provided in this division, upon reinstatement of a limited liability company's articles or a foreign limited liability company's registration in accordance with section 1706.09 of the Revised Code, the rights and privileges, including all real or personal property rights and credits and all contract and other rights, of the company existing at the time its articles or registration were canceled shall be fully vested in the company as if its articles or registration had not been canceled, and the company shall again be entitled to exercise the rights and privileges authorized by its articles. The name of a company whose articles have been canceled shall be reserved for a period of one year after the date of cancellation. If the reinstatement is not made within one year after the date of the cancellation of its articles and it appears that a corporate name, limited liability company name, limited liability partnership name, limited partnership name, trade name, or assumed name has been filed, the name of which is not distinguishable upon the record as provided in section 1706.07 of the Revised Code, the secretary of state shall require the applicant for reinstatement, as a condition prerequisite to such reinstatement, to amend its articles or registration by changing its name.

(B) Upon reinstatement in accordance with section 1706.09 of the Revised Code, both of the following apply to the exercise of or an attempt to exercise any rights or privileges, including entering into or performing any contracts, on behalf of the company by an officer, agent, or employee of the company, after cancellation and prior to reinstatement of the articles or registration:

(1) The exercise of or an attempt to exercise any rights or privileges on behalf of the company by the officer, agent, or employee of the company has the same force and effect that the exercise of or an attempt to exercise the right or privilege would have had if the company's articles or registration had not been canceled, if both of the following apply:

(a) The exercise of or an attempt to exercise the right or privilege was within the scope of the company's articles that existed prior to cancellation;

(b) The officer, agent, or employee had no knowledge that the company's articles or registration had been canceled.

(2) The company is liable exclusively for the exercise of or an attempt to exercise any rights or privileges on behalf of the company by an officer, agent, or employee of the company, if the conditions set forth in divisions (B)(1)(a) and (b) of this section are met.

(C) Upon reinstatement of a company's articles or registration in accordance with section 1706.09 of the Revised Code, the exercise of or an attempt to exercise any rights or privileges on behalf of the company by an officer, agent, or employee of the company, after cancellation and prior to reinstatement of the articles or registration, does not constitute a violation of section 1706.09 of the Revised Code, if the conditions set forth in divisions (B)(1)(a) and (b) of this section are met.

(D) This section is remedial in nature and is to be construed liberally to accomplish the purpose of providing full reinstatement of a limited liability company's articles of organization or a foreign limited liability company's registration, in accordance with this section, to the time of the cancellation of the articles or registration.

Sec. 1706.461. (A)(1) A limited liability company or foreign limited liability company may

appeal a cancellation under division (L) of section 1706.09 of the Revised Code within thirty days after the effective date of the cancellation. The appeal shall be made to one of the following:

(a) The court of common pleas of the county in which the street address of the limited liability company or foreign limited liability company's principal office is located;

(b) If the limited liability company or foreign limited liability company has no principal office in this state, to the court of common pleas of the county in which the street address of its statutory agent is located;

(c) If the limited liability company or foreign limited liability company has no statutory agent, to the Franklin county court of common pleas.

(2) The limited liability company or foreign limited liability company shall commence its appeal by petitioning the appropriate court to set aside the cancellation or to determine that the limited liability company or foreign limited liability company has cured the grounds for cancellation and attaching to the petition copies of those records of the secretary of state as may be relevant.

(B) The appropriate court may take, or may summarily order the secretary of state to take, whatever action the court considers appropriate.

(C) The appropriate court's order or decision may be appealed as in any other civil proceeding.

Sec. 1706.47. A limited liability company is dissolved, and its activities shall be wound up, upon the occurrence of any of the following:

(A) An event or circumstance that the operating agreement states causes dissolution;

(B) The consent of all the members;

(C) A limited liability company with canceled articles has failed to cure the grounds for cancellation for three years or more and any member or person authorized pursuant to section 1706.18 of the Revised Code consents to the dissolution;

(D) The passage of ninety consecutive days after the occurrence of the dissociation of the last remaining member; provided that upon dissociation of the last remaining member pursuant to division (E) of section 1706.411 of the Revised Code, the limited liability company shall not be dissolved if either of the following applies:

(1) The operating agreement provides for the admission of a substitute member effective prior to the passage of such time period;

(2) A substitute member has been admitted, as evidenced by a written record, prior to the passage of such time period, which admission is to be effective as of the date of such dissociation.

(E) On application by a member, the entry by the appropriate court of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities in conformity with the operating agreement.

Sec. 1706.471. (A) A dissolved limited liability company continues its existence as a limited liability company but may not carry on any activities except as is appropriate to wind up and liquidate its activities and affairs. Appropriate activities include all of the following:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to persons owning membership interests;

(3) Discharging or making provisions for discharging its liabilities;

(4) Distributing its remaining property in accordance with section 1706.475 of the Revised Code;

(5) Doing every other act necessary to wind up and liquidate its activities and affairs.

(B) In winding up its activities, a limited liability company may do any of the following:

(1) Deliver to the secretary of state for filing, on a form prescribed by the secretary of state, a certificate of dissolution setting forth all of the following:

(a) The name and registration number of the limited liability company;

(b) That the limited liability company has dissolved;

(c) The effective date of the certificate of dissolution if it is not to be effective upon the filing.

Such an effective date shall be a date certain and shall not be a date prior to the date of filing.

(d) A copy of the notice it will publish pursuant to division (A) of section 1706.474 of the Revised Code.

(e) Any other information the limited liability company considers proper.

(2) Preserve the limited liability company's activities and property as a going concern for a reasonable time;

(3) Prosecute, defend, or settle actions or proceedings whether civil, criminal, or administrative;

(4) Make an assignment of the limited liability company's property;

(5) Resolve disputes by mediation or arbitration;

(6) Merge or convert in accordance with sections 1706.71 to 1706.74 of the Revised Code.

(C) A limited liability company's dissolution, in itself:

(1) Is not an assignment of the limited liability company's property;

(2) Does not prevent the commencement of a proceeding by or against the limited liability company in its limited liability company name;

(3) Does not abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;

(4) Does not terminate the authority of its statutory agent;

(5) Does not abate, suspend, or otherwise alter the application of section 1706.26 of the Revised Code.

Sec. 1706.472. (A) Subject to division (C)(5) of section 1706.471 of the Revised Code, after dissolution, the remaining members, if any, and if none, a person appointed by all holders of the membership interest last assigned by the last person to have been a member, may wind up the limited liability company's activities.

(B) The appropriate tribunal may order supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities as follows:

(1) On application of a member, if the applicant establishes good cause;

(2) On application of an assignee, if both of the following apply:

(a) The limited liability company does not have any members;

(b) Within a reasonable time following the dissolution, a person has not been appointed pursuant to division (A) of this section.

(3) In connection with a proceeding under division (E) of section 1706.47 of the Revised

Code.

Sec. 1706.473. (A) A dissolved limited liability company may dispose of any known claims against it by following the procedures described in division (B) of this section at any time after the effective date of the dissolution of the limited liability company.

(B) A dissolved limited liability company may give notice of its dissolution in a record to the holder of any known claim. The notice shall do all of the following:

- (1) Identify the dissolved limited liability company;
- (2) Describe the information required to be included in a claim;
- (3) Provide a mailing address to which the claim is to be sent;
- (4) State the deadline, by which the dissolved limited liability company must receive the claim. The deadline shall not be sooner than ninety days from the effective date of the notice.

(5) State that if not sooner barred, the claim will be barred if not received by the deadline.

(C) Unless sooner barred by any other statute limiting actions, a claim against a dissolved limited liability company is barred in either of the following circumstances:

(1) A claimant who was given notice under division (B) of this section does not deliver the claim to the dissolved limited liability company by the deadline.

(2) A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejected notice.

(D) For purposes of this section, "claim" includes an unliquidated claim, but does not include either of the following:

- (1) A contingent liability that has not matured so that there is no immediate right to bring suit;
- (2) A claim based on an event occurring after the effective date of dissolution.

(E) Nothing in this section shall be construed to extend any otherwise applicable statute or period of limitations.

Sec. 1706.474. (A) A dissolved limited liability company may publish notice of its dissolution and request that persons with claims against the dissolved limited liability company present them in accordance with the notice.

(B) The notice described in division (A) of this section shall meet all of the following requirements:

(1) It shall be posted prominently on the principal web site then maintained by the limited liability company, if any, and provided to the secretary of state to be posted on the web site maintained by the secretary of state in accordance with division (J) of this section. The notice shall be considered published when posted on both web sites or, if the limited liability company does not then maintain a web site, when posted on the web site maintained by the secretary of state.

(2) It shall describe the information that must be included in a claim and provide a mailing address to which the claim must be sent.

(3) It shall state that if not sooner barred, a claim against the dissolved limited liability company will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(C) If a dissolved limited liability company publishes a notice in accordance with division (B) of this section, unless sooner barred by any other statute limiting actions, the claim of each of the

following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within two years after the publication of the notice:

(1) A claimant who was not given notice under division (B) of section 1706.473 of the Revised Code;

(2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on by the dissolved limited liability company;

(3) A claimant whose claim is contingent at the effective date of the dissolution of the limited liability company, or is based on an event occurring after the effective date of the dissolution of the limited liability company.

(D) A claim that is not barred under this section, any other statute limiting actions, or section 1706.473 of the Revised Code may be enforced as follows:

(1) Against a dissolved limited liability company, to the extent of its undistributed assets;

(2) Except as provided in division (H) of this section, if the assets of a dissolved limited liability company have been distributed after dissolution, against a member or assignee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or assignee after dissolution, whichever is less. A person's total liability for all claims under division (D) of this section may not exceed the total amount of assets distributed to the person after dissolution of the limited liability company.

(E) A dissolved limited liability company that published a notice under this section may file an application with the appropriate court in the county in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the dissolved limited liability company's statutory agent is or was last located, for a determination of the amount and form of security to be provided for payment of the following claims:

(1) Claims that are contingent;

(2) Claims that have not been made known to the dissolved limited liability company;

(3) Claims that are based on an event occurring after the effective date of the dissolution of the limited liability company but that, based on the facts known to the dissolved limited liability company, are reasonably estimated to arise after the effective date of the dissolution of the limited liability company.

Provision need not be made for any claim that is or is reasonably anticipated to be barred under division (C) of this section.

(F) Within ten days after the filing of the application provided for in division (E) of this section, notice of the proceeding shall be given by the dissolved limited liability company to each potential claimant as described in division (E) of this section.

(G) The appropriate court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

(H) Provision by the dissolved limited liability company for security in the amount and the form ordered by the appropriate court under division (E) of this section shall satisfy the dissolved limited liability company's obligation with respect to claims that are contingent, have not been made known to the dissolved limited liability company, or are based on an event occurring after the

effective date of the dissolution of the limited liability company. Such claims shall not be enforced against a person owning a membership interest to whom assets have been distributed by the dissolved limited liability company after the effective date of the dissolution of the limited liability company.

(I) Nothing in this section shall be construed to extend any otherwise applicable statute of limitations.

(J)(1) Except as provided in division (J)(2) of this section, the secretary of state shall make both of the following available to the public in a format that is searchable, viewable, and accessible through the internet:

(a) A list of all limited liability companies that have filed certificates of dissolution;

(b) For each dissolved limited liability company on the list described in division (J)(1)(a) of this section, a copy of both the certificate of dissolution and the notice delivered under division (B) of this section.

(2) After the materials relating to any dissolved limited liability company have been posted for five years, the secretary of state may remove from the web site the information that the secretary posted pursuant to division (J)(1) of this section that relates to that dissolved company.

Sec. 1706.475. (A) Upon the winding up of a limited liability company, payment or adequate provision for payment, shall be made to creditors, including members who are creditors, in satisfaction of liabilities of the limited liability company.

(B) After a limited liability company complies with division (A) of this section, any surplus shall be distributed as follows:

(1) First, to each person owning a membership interest that reflects contributions made on account of the membership interest and not previously returned, an amount equal to the value of the person's unreturned contributions;

(2) Then to each person owning a membership interest in the proportions in which the owners of membership interests share in distributions before dissolution.

(C) If the limited liability company does not have sufficient surplus to comply with division (B)(1) of this section, any surplus shall be distributed among the owners of membership interests in proportion to the value of their respective unreturned contributions.

Sec. 1706.51. (A) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs all of the following:

(1) The organization and internal affairs of the foreign limited liability company;

(2) The liability of a member as a member for the debts, obligations, or other liabilities of the foreign limited liability company or a series thereof;

(3) The authority of the members and agents of a foreign limited liability company or a series thereof;

(4) The liability of the following for the obligations of another series or the foreign limited liability company:

(a) The assets of the foreign limited liability company;

(b) The assets of a series thereof.

(B) A foreign limited liability company's application for registration as a foreign limited liability company may not be denied by reason of any difference between the laws of the jurisdiction under which the limited liability company is formed and the laws of this state.

(C) A foreign limited liability company, including a foreign limited liability company that has filed a registration as a foreign limited liability company, may not engage in any activities in this state that a limited liability company is forbidden to engage in by the laws of this state.

(D) A foreign limited liability company that has filed a registration as a foreign limited liability company shall in this state:

(1) Have the same but no greater rights than a limited liability company;

(2) Have the same but no greater privileges than a limited liability company;

(3) Except as otherwise provided by this chapter, be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a limited liability company.

Sec. 1706.511. (A) In order for a foreign limited liability company or any one or more of its series to transact business in this state, the foreign limited liability company shall register with the secretary of state. Neither a foreign limited liability company nor any one or more of its series may transact business in this state until the registration has been approved by the secretary of state and the foreign limited liability company or series is otherwise in compliance with sections 1706.51 to 1706.515 of the Revised Code.

(B) The registration as a foreign limited liability company shall state all of the following:

(1) The name of the foreign limited liability company and, if the name does not comply with section 1706.07 of the Revised Code, the assumed name adopted pursuant to division (A) of section 1706.513 of the Revised Code;

(2) The foreign limited liability company's jurisdiction of formation;

(3) The name and street address of the foreign limited liability company's statutory agent and a written acceptance of the appointment that is signed by the agent;

(4) That the foreign limited liability company is a foreign limited liability company;

(5) The information required by division (C) of this section, if applicable.

(C) If a foreign limited liability company establishes or provides for the establishment of one or more series of assets, it shall state all of the following in the registration as a foreign limited liability company:

(1) The fact that it provides for the establishment of one or more series of assets;

(2) Whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of that series only, and not against the assets of the foreign limited liability company generally or any other series thereof;

(3) Whether any of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of that series.

(D) Upon any change in circumstances that makes any statement contained in its filed registration as a foreign limited liability company no longer true, a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing an appropriate certificate of correction, on a form as prescribed by the secretary of state, so that its statement of foreign qualification is in all respects true.

(E) A foreign limited liability company is authorized to transact business in this state from the effective date of its registration as a foreign limited liability company until the earlier of the effective

date of its cancellation of foreign limited liability company or the effective date of the secretary of state's cancellation of the registration as a foreign limited liability company in accordance with section 1706.09 of the Revised Code.

Sec. 1706.512. (A) A foreign limited liability company shall not be considered to be transacting business in this state within the meaning of sections 1706.51 to 1706.515 of the Revised Code by reason of its or any one or more of its series' carrying on in this state any of the following actions:

- (1) Maintaining, defending, or settling in its own behalf any proceeding or dispute;
- (2) Holding meetings or carrying on any other activities concerning its internal affairs;
- (3) Maintaining accounts in financial institutions;
- (4) Maintaining offices or agencies for the assignment, exchange, and registration of the foreign limited liability company's or its series' own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating, as borrower or lender, or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts in its own behalf or enforcing mortgages or other security interests in real or personal property securing those debts, and holding, protecting, and maintaining property so acquired;
- (9) Owning real or personal property;
- (10) Conducting an isolated transaction that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce.

(B) A foreign limited liability company shall not be considered to be transacting business in this state solely because it or any one or more of its series:

- (1) Owns a controlling interest in an entity that is transacting business in this state;
- (2) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state;
- (3) Is a member of a limited liability company or foreign limited liability company that is transacting business in this state.

(C) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company, or a series thereof, to service of process, taxation, or regulation under laws of this state other than this chapter.

(D) Nothing in this section shall limit or affect the right to subject a foreign limited liability company, or a series thereof, to the jurisdiction of the courts of this state or to serve upon any foreign limited liability company, or series thereof, any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company, or series thereof, pursuant to any other provision of law or pursuant to the applicable rules of civil procedure.

Sec. 1706.513. (A) A foreign limited liability company whose name does not comply with

section 1706.07 of the Revised Code may not file a registration as a foreign limited liability company until it adopts, for the purpose of transacting business in this state, an assumed name that complies with section 1706.07 of the Revised Code. A foreign limited liability company that adopts an assumed name under this division and then files a registration as a foreign limited liability company under that assumed name need not file a name registration when transacting business under that assumed name. After filing the registration as a foreign limited liability company under an assumed name, a foreign limited liability company shall transact business in this state under the assumed name unless the foreign limited liability company has filed a name registration under another name and is authorized to transact business in this state under such name.

(B) If a foreign limited liability company to which a registration as a foreign limited liability company has been filed changes its name to one that does not comply with section 1706.07 of the Revised Code, it may not thereafter transact business in this state until it complies with division (A) of this section by filing a certificate of correction.

Sec. 1706.514. (A) A foreign limited liability company that has a registration as a foreign limited liability company in the records of the secretary of state may cancel its registration as a limited liability company by delivering for filing a certificate of cancellation of registration of a foreign limited liability company to the secretary of state.

(B) A certificate of cancellation of registration of a foreign limited liability company shall set forth all of the following:

(1) The name and registration number of the foreign limited liability company, any assumed name adopted for use in this state, and the name of the jurisdiction under whose law it is organized;

(2) The name and street address of the statutory agent, or if a statutory agent is no longer to be maintained, a statement that the foreign limited liability company will not maintain a statutory agent, and the street address to which service of process may be mailed pursuant to section 1706.09 of the Revised Code;

(3) That the foreign limited liability company, and all series thereof, will no longer transact business in this state and that it relinquishes its authority to transact business in this state;

(4) That the foreign limited liability company is canceling its registration as a foreign limited liability company;

(5) That any statement of assumed name it has on file in the records of the secretary of state and any assumed name with respect to the foreign limited liability company, are withdrawn upon the effective date of the cancellation of registration of a foreign limited liability company.

(C) The cancellation of registration of a foreign limited liability company shall be effective upon filing by the secretary of state, whereupon the registration as a foreign limited liability company shall be canceled and the foreign limited liability company, and all series thereof, shall be without authority to transact business in this state.

(D) Cancellation of a registration as a foreign limited liability company shall not terminate the authority of any statutory agent appointed by the foreign limited liability company.

Sec. 1706.515. (A) No foreign limited liability company, or a series thereof, transacting business in this state, nor anyone on its behalf, shall be permitted to maintain a proceeding in any court in this state for the collection of its debts unless an effective registration as a limited liability company for the foreign limited liability company is on file in the records of the secretary of state.

(B) A court may stay a proceeding commenced by a foreign limited liability company, or series thereof, until it determines whether the foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state. If the court determines that the foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state, the court may further stay the proceeding until there is an effective registration as a limited liability company on file in the records of the secretary of state with respect to the foreign limited liability company. If a court determines that a foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state, and the foreign limited liability company subsequently delivers for filing to the secretary of state a registration as a limited liability company, no proceeding in any court in this state to which the foreign limited liability company, or a series thereof, is a party shall, after the effective date of the registration as a foreign limited liability company, be dismissed by reason of the foreign limited liability company's prior noncompliance with section 1706.511 of the Revised Code.

(C) If a foreign limited liability company, or a series thereof, conducts activities in this state without having on file in the records of the secretary of state a registration as a foreign limited liability company, the foreign limited liability company shall be liable to this state for an amount equal to the fee as prescribed by the secretary of state from time to time.

No registration as a foreign limited liability company shall be filed until payment of the amounts due under this division is made.

(D) The amounts due to this state under division (C) of this section may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company, or series thereof, has conducted activities in this state in violation of sections 1706.51 to 1706.515 of the Revised Code, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further conducting of activities by the foreign limited liability company and all of its series, and the further exercise of any rights and privileges of a foreign limited liability company in this state until all amounts plus any interest and court costs that the court may assess have been paid, and until the foreign limited liability company has otherwise complied with sections 1706.51 to 1706.515 of the Revised Code.

(E) Notwithstanding divisions (A) and (B) of this section, the conducting of activities in this state by a foreign limited liability company, or a series thereof, without having a registration as a foreign limited liability company on file in the records of the secretary of state does not impair the validity of the acts of the foreign limited liability company, or a series thereof, or prevent the foreign limited liability company, or a series thereof, from defending any proceeding in this state.

(F) Neither a member nor agent of a foreign limited liability company nor a member associated with a series or agent of a series, is liable for the debts, obligations, or other liabilities of the foreign limited liability company, or a series thereof, solely because the foreign limited liability company, or a series thereof, conducted activities in this state without a registration as a foreign limited liability company being on file in the records of the secretary of state.

Sec. 1706.61. (A) A member may commence or maintain a derivative action in the right of a limited liability company to recover a judgment in favor of the limited liability company by complying with sections 1706.61 to 1706.617 of the Revised Code.

(B) A member associated with a series of a limited liability company may commence or maintain a derivative action in the right of the series to recover a judgment in favor of the series by complying with sections 1706.61 to 1706.617 of the Revised Code.

Sec. 1706.611. (A) A member may commence or maintain a derivative action in the right of the limited liability company only if the member meets both of the following conditions:

(1) The member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

(2) The member either:

(a) Was a member of the limited liability company at the time of the act or omission of which the member complains;

(b) Acquired a membership interest through assignment by operation of law from a person who was a member at the time of the act or omission of which the member complains.

(B) A member associated with a series of a limited liability company may commence or maintain a derivative action in the right of the series only if the member meets both of the following conditions:

(1) The member fairly and adequately represents the interests of the series in enforcing the right of the series.

(2) The member either:

(a) Was associated with the series at the time of the act or omission of which the member complains;

(b) Acquired a membership interest through assignment by operation of law from a person who was a member associated with the series at the time of the act or omission of which the member complains.

Sec. 1706.612. A member may not commence a derivative action in the right of the limited liability company, or a series thereof, until both of the following occur:

(A) A written demand has been made upon the limited liability company or the series to take suitable action.

(B) Ninety days have expired from the date the demand was made unless either of the following applies:

(1) The member has earlier been notified that the demand has been rejected by the limited liability company or the series;

(2) Irreparable injury to the limited liability company or the series would result by waiting for the expiration of the ninety-day period.

Sec. 1706.613. For the purpose of allowing the limited liability company or the series thereof time to undertake an inquiry into the allegations made in the demand or complaint commenced pursuant to sections 1706.61 to 1706.617 of the Revised Code, the court may stay any derivative action for the period the court deems appropriate.

Sec. 1706.614. (A)(1) A derivative action in the right of a limited liability company shall be dismissed by the court on motion by the limited liability company if one of the groups specified in division (A)(2) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative action is not in the best interests of the limited liability company.

(2) Subject to the requirements of division (A)(3) of this section, the determination of whether the maintenance of a derivative action in the right of a limited liability company is in the best interests of the limited liability company shall be made by a majority vote of either of the following:

(a) The independent members of the limited liability company;

(b) The committee members of a committee consisting of independent members appointed by a majority of the independent members.

(3) If the determination is not made pursuant to division (A)(1) of this section, the determination shall be made by the person, or, in the case of more than one person, by a majority of the persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the limited liability company for those purposes.

(B)(1) A derivative action in the right of a series of a limited liability company shall be dismissed on motion by the series if one of the groups specified in division (B)(2) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative action is not in the best interests of the series.

(2) Subject to the requirements of division (B)(3) of this section, the determination whether the maintenance of a derivative action on behalf of a series of a limited liability company is in the best interests of the series shall be made by a majority vote of either of the following:

(a) The independent members associated with the series;

(b) The committee members of a committee consisting of independent members associated with the series appointed by a majority of the independent members associated with the series.

(3) If the determination is not made pursuant to division (B)(1) of this section, the determination shall be made by the person, or, in the case of more than one person, by a majority of the persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the series for those purposes.

(C) The court shall appoint only independent persons to the panel described in divisions (A)(3) and (B)(3) of this section.

(D) The presence of one or more of the following circumstances, without more, shall not prevent a person from being considered independent for purposes of this section:

(1) The naming of the person as a defendant in the derivative action or as a person against whom action is demanded;

(2) The approval by that person of the act being challenged in the derivative action or demand where the act did not result in personal benefit to that person;

(3) The making of the demand pursuant to section 1706.612 of the Revised Code or the commencement of the derivative action pursuant to sections 1706.61 to 1706.617 of the Revised Code.

(E) Subject to section 1706.615 of the Revised Code, a panel appointed by the court pursuant to division (A)(3) or (B)(3) of this section shall have the authority to continue, settle, or discontinue the derivative proceeding as the court may confer upon the panel.

(F) The plaintiff in the derivative action shall have the burden of proving that any of the requirements of division (A) or (B) of this section have not been met.

Sec. 1706.615. A derivative action may not be discontinued or settled without the court's

approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of members of the limited liability company, or the interests of members associated with a series of the limited liability company, the court shall direct that notice be given to the members affected.

Sec. 1706.616. On termination of the derivative action the court may do any of the following:

(A) Order the limited liability company to pay the plaintiff's reasonable expenses, including attorney fees, incurred by the plaintiff in the derivative action if the court finds that the derivative action has resulted in a substantial benefit to the limited liability company;

(B) Order a series to pay the plaintiff's reasonable expenses, including attorney fees, incurred by the plaintiff in the derivative action if the court finds that the derivative action has resulted in a substantial benefit to the series;

(C) Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees, incurred by the defendant in defending the derivative action if it finds that the derivative action was commenced or maintained without reasonable cause or for an improper purpose;

(D) Order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper, if it finds both of the following:

(1) That the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(2) That the pleading, motion, or other paper was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Sec. 1706.617. In any derivative action in the right of a foreign limited liability company, or a series thereof, the right of a person to commence or maintain a derivative action in the right of a foreign limited liability company, or a series thereof, and any matters raised in the action covered by sections 1706.61 to 1706.616 of the Revised Code shall be governed by the law of the jurisdiction under which the foreign limited liability company was formed; except that any matters raised in the action covered by sections 1706.613, 1706.615, and 1706.616 of the Revised Code shall be governed by the law of this state.

Sec. 1706.62. (A) Subject to division (B) of this section, a member may maintain a direct action against another member or members or the limited liability company, or a series thereof, to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(B) A member maintaining a direct action under division (A) of this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company, or series thereof.

(C)(1) A member may maintain a direct action to enforce a right of a limited liability company if all members at the time of suit are parties to the action.

(2) A member associated with a series may maintain a direct action to enforce a right of the series if all members associated with the series at the time of suit are parties to the action.

Sec. 1706.71. (A) A limited liability company may merge with one or more other constituent entities pursuant to sections 1706.71 to 1706.713 of the Revised Code and to an agreement of merger

if all of the following conditions are met:

(1) The governing statute of each of the other entities authorizes the merger.

(2) The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes.

(3) Each of the other entities complies with its governing statute in effecting the merger.

(B) An agreement of merger shall be in a record and shall include all of the following:

(1) The name and form of each constituent entity;

(2) The name and form of the surviving entity and, if the surviving entity is to be created pursuant to the merger, a statement to that effect;

(3) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent entity into any combination of money, interests in the surviving entity, and other consideration as permitted under division (C) of this section;

(4) If the surviving entity is to be created pursuant to the merger, the surviving entity's organizational documents that are proposed to be in a record;

(5) If the surviving entity is not to be created pursuant to the merger, any amendments to be made by the merger to the surviving entity's organizational documents that are, or are proposed to be, in a record.

(C) In connection with a merger, rights or securities of or interests in the constituent entity may be any of the following:

(1) Exchanged for or converted into cash, property, or rights or securities of or interests in the surviving entity;

(2) In addition to or in lieu of division (C)(1) of this section, exchanged for or converted into cash, property, or rights or securities of or interests in another entity;

(3) Canceled.

Sec. 1706.711. (A) To be effective, an agreement of merger shall be consented to by all the members of a constituent limited liability company.

(B) After the agreement of merger is approved, and at any time before a certificate of merger is delivered to the secretary of state for filing under section 1706.712 of the Revised Code, a constituent limited liability company may amend the agreement or abandon the merger:

(1) As provided in the agreement; or

(2) Except as otherwise prohibited in the agreement, with the same consent as was required to approve the agreement.

Sec. 1706.712. (A) After each constituent entity has approved the agreement of merger, a certificate of merger shall be signed on behalf of both of the following:

(1) Each constituent limited liability company, as provided in division (A) of section 1706.17 of the Revised Code;

(2) Each other constituent entity, as provided in its governing statute.

(B) A certificate of merger under this section shall include all of the following:

(1) The name and form of each constituent entity, the jurisdiction of its governing statute, and its registration number, if any, as it appears on the records of the secretary of state;

(2) The name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created pursuant to the merger, a statement to that effect;

(3) The date the merger is effective under the governing statute of the surviving entity;

(4) If the surviving entity is to be created pursuant to the merger:

(a) If it will be a limited liability company, the limited liability company's articles of organization;

(b) If it will be an entity other than a limited liability company, any organizational document that creates the entity that is required to be in a public record.

(5) If the surviving entity exists before the merger, any amendments provided for in the agreement of merger for the organizational document that created the entity that are in a public record;

(6) A statement as to each constituent entity that the merger was approved as required by the entity's governing statute;

(7) If the surviving entity is a foreign entity not authorized to transact business in this state, the street address of its statutory agent;

(8) Any additional information required by the governing statute of any constituent entity.

(C) Each constituent limited liability company shall deliver the certificate of merger for filing in the office of the secretary of state.

(D) A merger becomes effective under sections 1706.71 to 1706.74 of the Revised Code as follows:

(1) If the surviving entity is a limited liability company, upon the later of the following:

(a) Compliance with division (C) of this section;

(b) As specified in the certificate of merger.

(2) If the surviving entity is not a limited liability company, as provided by the governing statute of the surviving entity.

Sec. 1706.713. (A) When a merger becomes effective, all of the following apply:

(1) The surviving entity continues or comes into existence.

(2) Each constituent entity that merges into the surviving entity ceases to exist as a separate entity.

(3) All property owned by each constituent entity, or series thereof, that ceases to exist vests in the surviving entity without reservation or impairment.

(4) All debts, obligations, or other liabilities of each constituent entity, or series thereof, that ceases to exist continue as debts, obligations, or other liabilities of the surviving entity.

(5) An action or proceeding pending by or against any constituent entity, or series thereof, that ceases to exist continues as if the merger had not occurred.

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent entity, or series thereof, that ceases to exist vest in the surviving entity.

(7) Except as otherwise provided in the agreement of merger, the terms and conditions of the agreement of merger take effect.

(8) Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of sections 1706.47 to 1706.475 of the Revised Code and does not dissolve a series for purposes of sections 1706.76 to 1706.7613 of the Revised Code.

(9) If the surviving entity is created pursuant to the merger:

(a) If it is a limited liability company, the articles of organization become effective;

(b) If it is an entity other than a limited liability company, the organizational document that creates the entity becomes effective.

(10) If the surviving entity existed before the merger, any amendments provided for in the certificate of merger for the organizational document that created the entity become effective.

(B) A surviving entity that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent entity, if before the merger the constituent entity was subject to suit in this state on the debt, obligation, or other liability. Service of process on a surviving entity that is a foreign entity and not authorized to transact business in this state for the purposes of enforcing a debt, obligation, or other liability may be made in the same manner and has the same consequences as provided in section 1706.09 of the Revised Code as if the surviving entity was a foreign limited liability company.

Sec. 1706.72. (A) An entity other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to an entity other than a limited liability company pursuant to sections 1706.72 to 1706.723 of the Revised Code and a written declaration of conversion if all of the following apply:

(1) The governing statute of the entity that is not a limited liability company authorizes the conversion;

(2) The law of the jurisdiction governing the converting entity and the converted entity does not prohibit the conversion;

(3) The converting entity and the converted entity comply with their respective governing statutes and organizational documents in effecting the conversion.

(B) A written declaration of conversion shall be in a record and include all of the following:

(1) The name and form of the converting entity before conversion;

(2) The name and form of the converted entity after conversion;

(3) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration allowed under division (C) of this section.

(4) The organizational documents of the converted entity that are, or are proposed to be, in a record.

(C) In connection with a conversion, rights or securities of or interests in the converting entity may be any of the following:

(1) Exchanged for or converted into cash, property, or rights or securities of or interests in the converted entity;

(2) In addition to or in lieu of division (C)(1) of this section, exchanged for or converted into cash, property, or rights or securities of or interests in another entity;

(3) Canceled.

Sec. 1706.721. (A) A declaration of conversion must be consented to by all the members of a converting limited liability company.

(B) After a conversion is approved, and at any time before the certificate of conversion is delivered to the secretary of state for filing under section 1706.722 of the Revised Code, a converting limited liability company may amend the declaration or abandon the conversion:

(1) As provided in the declaration; or
(2) Except as otherwise prohibited in the declaration, by the same consent as was required to approve the declaration.

Sec. 1706.722. (A) After a declaration of conversion is approved, both of the following apply:

(1) A converting limited liability company shall deliver to the secretary of state for filing a certificate of conversion. The certificate of conversion shall be signed as provided in division (A) of section 1706.17 of the Revised Code and shall include all of the following:

(a) A statement that the converting limited liability company has been converted into the converted entity;

(b) The name and form of the converted entity and the jurisdiction of its governing statute;

(c) The date the conversion is effective under the governing statute of the converted entity;

(d) A statement that the conversion was approved as required by this chapter;

(e) A statement that the conversion was approved as required by the governing statute of the converted entity;

(f) If the converted entity is a foreign entity not authorized to transact business in this state, the street address of its statutory agent for the purposes of division (B) of section 1706.723 of the Revised Code.

(2) If the converted entity is a limited liability company, the converting entity shall deliver to the secretary of state for filing articles of organization which shall include, in addition to the information required by division (A) of section 1706.16 of the Revised Code, all of the following:

(a) A statement that the converted entity was converted from the converting entity;

(b) The name and form of the converting entity and the jurisdiction of the converting entity's governing statute;

(c) A statement that the conversion was approved as required by the governing statute of the converting entity.

(B) A conversion shall become effective as follows:

(1) If the converted entity is a limited liability company, when the articles of organization take effect;

(2) If the converted entity is not a limited liability company, as provided by the governing statute of the converted entity.

Sec. 1706.723. (A) When a conversion takes effect, all of the following apply:

(1) All property owned by the converting entity, or series thereof, remains vested in the converted entity.

(2) All debts, obligations, or other liabilities of the converting entity, or series thereof, continue as debts, obligations, or other liabilities of the converted entity.

(3) An action or proceeding pending by or against the converting entity, or series thereof, continues as if the conversion had not occurred.

(4) Except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting entity, or series thereof, remain vested in the converted entity.

(5) Except as otherwise provided in the plan of conversion, the terms and conditions of the

declaration of conversion take effect.

(6) Except as otherwise agreed, for all purposes of the laws of this state, the converting entity, and any series thereof, shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity, or series thereof.

(7) For all purposes of the laws of this state, the rights, privileges, powers, and interests in property of the converting entity, and all series thereof, as well as the debts, liabilities, and duties of the converting entity, and all series thereof, shall not be deemed to have been assigned to the converted entity as a consequence of the conversion.

(8) If the converted entity is a limited liability company, for all purposes of the laws of this state, the limited liability company shall be deemed to be the same entity as the converting entity, and the conversion shall constitute a continuation of the existence of the converting entity in the form of a limited liability company.

(9) If the converted entity is a limited liability company, the existence of the limited liability company shall be deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, organized, incorporated, or otherwise came into being.

(B) A converted entity that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company, or series thereof, is liable if, before the conversion, the converting limited liability company, or series thereof, was subject to suit in this state on the debt, obligation, or other liability. Service of process on a converted entity that is a foreign entity and not authorized to transact business in this state for purposes of enforcing a debt, obligation, or other liability under this division may be made in the same manner and has the same consequences as provided in section 1706.09 of the Revised Code, as if the converted entity were a foreign limited liability company.

Sec. 1706.73. (A) If a member of a constituent or converting limited liability company will have personal liability with respect to a surviving or converted entity, approval or amendment of a plan of merger or a declaration of conversion are ineffective without the consent of the member, unless both of the following conditions are met:

(1) The limited liability company's operating agreement provides for approval of a merger or conversion with the consent of fewer than all the members.

(2) The member has consented to the provision of the operating agreement described in division (A)(1) of this section.

(B) A member does not give the consent required by division (A) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Sec. 1706.74. Sections 1706.71 to 1706.74 of the Revised Code do not preclude an entity from being merged or converted under law other than this chapter.

Sec. 1706.76. (A) An operating agreement may establish or provide for the establishment of one or more designated series of assets that has both of the following:

(1) Either or both of the following:

(a) Separate rights, powers, or duties with respect to specified property or obligations of the

limited liability company or profits and losses associated with specified property or obligations:

(b) A separate purpose or investment objective.

(2) At least one member associated with each series.

(B) A series established in accordance with division (A) of this section may carry on any activity, whether or not for profit.

Sec. 1706.761. (A) Subject to division (B) of this section, both of the following apply:

(1) The debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series thereof.

(2) None of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of a series.

(B) Division (A) of this section applies only if all of the following conditions are met:

(1) The records maintained for that series account for the assets of that series separately from the other assets of the company or any other series.

(2) The operating agreement contains a statement to the effect of the limitations provided in division (A) of this section.

(3) The limited liability company's articles of organization contains a statement that the limited liability company may have one or more series of assets subject to the limitations provided in division (A) of this section.

Sec. 1706.762. (A) Assets of a series may be held directly or indirectly, including in the name of the series, in the name of the limited liability company, through a nominee, or otherwise.

(B) If the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirement of division (B)(1) of section 1706.761 of the Revised Code.

Sec. 1706.763. The statement of limitation on liabilities of a series required by division (B) (3) of section 1706.761 of the Revised Code is sufficient regardless of whether either of the following applies:

(A) The limited liability company has established any series under this chapter when the statement of limitations is contained in the articles of organization;

(B) The statement of limitations makes reference to a specific series of the limited liability company.

Sec. 1706.764. (A) A person shall not voluntarily dissociate as a member associated with a series.

(B) A person's dissociation from a series is wrongful only if one of the following applies:

(1) The person's dissociation is in breach of an express provision of the operating agreement.

(2) The person is expelled as a member associated with the series by determination of a tribunal under division (E) of section 1706.765 of the Revised Code.

(3) The person is dissociated as a member associated with a series by becoming a debtor in

bankruptcy or making a general assignment for the benefit of creditors.

(C) A person that wrongfully dissociates as a member associated with a series is liable to the series and, subject to section 1706.61 of the Revised Code, to the other members associated with that series for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member associated with a series to the series or the other members associated with that series.

Sec. 1706.765. A person is dissociated as a member associated with a series when any of the following occurs:

(A) An event stated in the operating agreement as causing the person's dissociation from the series occurs.

(B) The person is dissociated as a member of the limited liability company pursuant to section 1706.411 of the Revised Code.

(C) The person is expelled as a member associated with that series pursuant to the operating agreement.

(D) The person is expelled as a member associated with the series by the unanimous consent of the other members associated with that series and if any of the following applies:

(1) It is unlawful to carry on the series' activities with the person as a member associated with that series.

(2) The person is an entity and, within ninety days after the series notifies the person that it will be expelled as a member associated with that series because the person has filed a certificate of dissolution or the equivalent, or its right to transact business has been suspended by its jurisdiction of formation, the certificate of dissolution or the equivalent has not been revoked or its right to transact business has not been reinstated.

(3) The person is an entity and, within ninety days after the series notifies the person that it will be expelled as a member associated with that series because the person has been dissolved and its activities are being wound up, the entity has not been reinstated or the dissolution and winding up have not been revoked or canceled.

(E) On application by the series, the person is expelled as a member associated with that series by tribunal order for any of the following reasons:

(1) The person has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, that series' activities.

(2) The person has willfully or persistently committed, or is willfully or persistently committing, a material breach of the operating agreement or the person's duties or obligations under this chapter or other applicable law.

(3) The person has engaged, or is engaging, in conduct relating to that series' activities that makes it not reasonably practicable to carry on the activities with the person as a member associated with that series.

(F) In the case of a person who is an individual, the person dies, a guardian or general conservator is appointed for the person, or a tribunal determines that the person has otherwise become incapable of performing the person's duties as a member associated with a series under this chapter or the operating agreement.

(G) The person becomes a debtor in bankruptcy, executes an assignment for the benefit of

creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property. This division shall not apply to a person who is the sole remaining member associated with a series.

(H) In the case of a person that is a trust or is acting as a member associated with a series by virtue of being a trustee of a trust, the trust's entire membership interest associated with the series is distributed, but not solely by reason of the substitution of a successor trustee.

(I) In the case of a person that is an estate or is acting as a member associated with a series by virtue of being a personal representative of an estate, the estate's entire membership interest associated with the series is distributed, but not solely by reason of the substitution of a successor personal representative.

(J) In the case of a member associated with a series that is not an individual, the legal existence of the person otherwise terminates.

Sec. 1706.766. (A) A person who has dissociated as a member associated with a series shall have no right to participate in the activities and affairs of that series and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated from that series.

(B) A person's dissociation as a member associated with a series does not of itself discharge the person from any debt, obligation, or liability to that series, the limited liability company, or the other members that the person incurred while a member associated with that series.

(C) A member's dissociation from a series does not, in itself, cause the member to dissociate from any other series or require the winding up of the series.

(D) A member's dissociation from a series does not, in itself, cause the member to dissociate from the limited liability company.

Sec. 1706.767. A series may be dissolved and its activities and affairs may be wound up without causing the dissolution of the limited liability company. The dissolution and winding up of a series does not abate, suspend, or otherwise affect the limitation on liabilities of the series provided by section 1706.761 of the Revised Code.

Sec. 1706.768. A series is dissolved and its activities and affairs shall be wound up upon the first to occur of the following:

(A) The dissolution of the limited liability company under section 1706.47 of the Revised Code;

(B) An event or circumstance that the operating agreement states causes dissolution of the series;

(C) The consent of all of the members associated with the series;

(D) The passage of ninety days after the occurrence of the dissociation of the last remaining member associated with the series;

(E) On application by a member associated with the series, the entry by the appropriate court of an order dissolving the series on the grounds that it is not reasonably practicable to carry on the series' activities in conformity with the operating agreement.

Sec. 1706.769. (A) A dissolved series continues its existence as a series but shall not carry on any activities except as is appropriate to wind up and liquidate its activities and affairs. Appropriate activities include all of the following:

- (1) Collecting the assets of the series;
 - (2) Disposing of the properties of the series that will not be distributed in kind to persons owning membership interests associated with the series;
 - (3) Discharging or making provisions for discharging the liabilities of the series;
 - (4) Distributing the remaining property of the series in accordance with section 1706.7613 of the Revised Code;
 - (5) Doing any other act necessary to wind up and liquidate the series' activities and affairs.
- (B) In winding up a series' activities, a series may do any of the following:
- (1) Preserve the series' activities and property as a going concern for a reasonable time;
 - (2) Prosecute, defend, or settle actions or proceedings whether civil, criminal, or administrative;
 - (3) Make an assignment of the series' property;
 - (4) Resolve disputes by mediation or arbitration.
- (C) A series' dissolution, in itself:
- (1) Is not an assignment of the series' property;
 - (2) Does not prevent the commencement of a proceeding by or against the series in the series' name;
 - (3) Does not abate or suspend a proceeding pending by or against the series on the effective date of dissolution;
 - (4) Does not abate, suspend, or otherwise alter the application of section 1706.7613 of the Revised Code.

Sec. 1706.7610. (A) Subject to division (C) of section 1706.769 of the Revised Code, after dissolution of a series, the remaining members associated with the series, if any, and if none, a person appointed by all holders of the membership interest last assigned by the last person to have been a member associated with the series, may wind up the series' activities.

(B) The appropriate tribunal may order supervision of the winding up of a dissolved series, including the appointment of a person to wind up the series' activities for any of the following reasons:

- (1) On application of a member associated with the series, if the applicant establishes good cause;
- (2) On application of an assignee associated with a series, if both of the following apply:
 - (a) There are no members associated with the series.
 - (b) Within a reasonable time following the dissolution a person has not been appointed pursuant to division (A) of this section.
- (3) In connection with a proceeding under division (E) of section 1706.768 of the Revised Code.

Sec. 1706.7611. (A) A dissolved series may dispose of any known claims against it by following the procedures described in division (B) of this section, at any time after the effective date of the dissolution of the series.

(B) A dissolved series may give notice of the dissolution in a record to the holder of any known claim. The notice shall do all of the following:

- (1) Identify the limited liability company and the dissolved series;

(2) Describe the information required to be included in a claim;

(3) Provide a mailing address to which the claim is to be sent;

(4) State the deadline by which the dissolved series must receive the claim. The deadline shall not be sooner than one hundred twenty days from the effective date of the notice.

(5) State that if not sooner barred, the claim will be barred if not received by the deadline.

(C) Unless sooner barred by any other statute limiting actions, a claim against a dissolved series is barred in either of the following circumstances:

(1) If a claimant who was given notice under division (B) of this section does not deliver the claim to the dissolved series by the deadline;

(2) If a claimant whose claim was rejected by the dissolved series does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejected notice.

(D) For purposes of this section, "claim" includes an unliquidated claim, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(E) Nothing in this section shall be construed to extend any otherwise applicable statute of limitations.

Sec. 1706.7612. (A) A dissolved series may publish notice of its dissolution and request that persons with claims against the dissolved series present them in accordance with the notice.

(B) The notice authorized by division (A) of this section shall meet all of the following criteria:

(1) It shall be posted prominently on the principal web site then maintained by the limited liability company, if any, and provided to the secretary of state to be posted on the web site maintained by the secretary of state in accordance with division (J) of section 1706.474 of the Revised Code. The notice shall be considered published when posted on the secretary of state's web site.

(2) It shall describe the information that must be included in a claim and provide a mailing address to which the claim must be sent.

(3) It shall state that if not sooner barred, a claim against the dissolved series will be barred unless a proceeding to enforce the claim is commenced within two years following the publication of the notice.

(C) If a dissolved series publishes a notice in accordance with division (B) of this section, unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved series within two years after the publication date of the notice:

(1) A claimant who was not given notice under division (B) of section 1706.7611 of the Revised Code;

(2) A claimant whose claim was timely sent to the dissolved series but not acted on by the dissolved series;

(3) A claimant whose claim is contingent at the effective date of the dissolution of the series, or is based on an event occurring after the effective date of the dissolution of the series.

(D) A claim that is not barred under this section, any other statute limiting actions, or section 1706.7611 of the Revised Code may be enforced against either of the following:

(1) A dissolved series, to the extent of its undistributed assets associated with the series;

(2) A member or assignee associated with the series to the extent of that person's proportionate share of the claim or of the assets of the series distributed to the member or assignee after dissolution, whichever is less, except as provided in division (H) of this section and only if the assets of a dissolved series have been distributed after dissolution. A person's total liability for all claims under division (D) of this section shall not exceed the total amount of assets of the series distributed to the person after dissolution of the series.

(E) A dissolved series that published a notice under this section may file an application with the appropriate court in the county in which the limited liability company's principal office is located or, if it has none in this state, in the county in which the limited liability company's statutory agent is or was last located. The application shall be for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved series or that are based on an event occurring after the effective date of the dissolution of the series but that, based on the facts known to the dissolved series, are reasonably estimated to arise after the effective date of the dissolution of the series. Provision need not be made for any claim that is or is reasonably anticipated to be barred under division (C) of this section.

(F) Within ten days after the filing of the application provided for in division (E) of this section, notice of the proceeding shall be given by the dissolved series to each potential claimant as described in that division.

(G) The appropriate court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved series.

(H) Provision by the dissolved series for security in the amount and the form ordered by the appropriate court under division (E) of this section shall satisfy the dissolved series' obligation with respect to claims that are contingent, have not been made known to the dissolved series, or are based on an event occurring after the effective date of the dissolution of the series. Those claims may not be enforced against a person owning a membership interest to whom assets have been distributed by the dissolved series after the effective date of the dissolution of the series.

(I) Nothing in this section shall be construed to extend any otherwise applicable statute of limitations.

Sec. 1706.7613. (A) Upon the winding up of a series, payment or adequate provision for payment shall be made to creditors of the series, including, to the extent permitted by law, members who are associated with the series and who are also creditors of the series, in satisfaction of liabilities of the series.

(B) After a series complies with division (A) of this section, any surplus shall be distributed as follows:

(1) First, to each person owning a membership interest associated with the series that reflects contributions made on account of that membership interest and not previously returned, an amount equal to the value of the person's unreturned contributions;

(2) Then to each person owning a membership interest associated with the series in the proportions in which the owners of membership interests associated with the series share in

distributions prior to dissolution of the series.

(C) If the series does not have sufficient surplus to comply with division (B)(1) of this section, any surplus shall be distributed among the owners of membership interests associated with the series in proportion to the value of their respective unreturned contributions.

Sec. 1706.81. This chapter modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act," 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

Sec. 1706.82. A limited liability company formed and existing under this chapter may conduct its activities and affairs, carry on its operations, and have and exercise the powers granted by this chapter in any state, foreign country, or other jurisdiction.

Sec. 1706.83. On and after January 1, 2022, this chapter shall govern all limited liability companies, including every foreign limited liability company that files an application for registration as a foreign limited liability company on or after January 1, 2022, every foreign limited liability company that registers a name in this state on or after January 1, 2022, every foreign limited liability company that has registered a name in this state prior to January 1, 2022, and every foreign limited liability company that has filed an application for registration as a foreign limited liability company prior to January 1, 2022, pursuant to Chapter 1705. of the Revised Code.

Sec. 1706.84. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and agents whether or not existing as such at the time of the enactment of any such amendment.

Sec. 1729.36. (A) An association may merge or consolidate with one or more entities, if such merger or consolidation is permitted by the laws under which each constituent entity exists and the association complies with this section.

(B) Each constituent association shall comply with section 1729.35 of the Revised Code with respect to form and approval of an agreement of merger or consolidation, and each constituent entity shall comply with the applicable provisions of the laws under which it exists, except that the agreement of merger or consolidation, by whatever name designated, shall comply with divisions (C) and (D) of this section.

(C) The agreement of merger or consolidation shall set forth all of the following:

- (1) The names of the states and the laws under which each constituent entity exists;
- (2) All statements and matters required to be set forth in agreements of merger or consolidation by the laws under which any constituent entity exists;
- (3) A statement that the surviving or new entity is to be an association, a foreign association, a corporation other than a cooperative, or a limited liability company;
- (4) If the surviving or new entity is to be a foreign entity:
 - (a) The place where the principal office of the surviving or new entity is to be located in the state in which the surviving or new entity is to exist;
 - (b) The consent by the surviving or new entity that it may be sued and served with process in this state in any proceeding for the enforcement of any obligation of any constituent association or domestic entity;
 - (c) The consent by the surviving or new entity that it shall be subject to the applicable