

By the Committee on Judiciary and Senator Klein

308-1894-99

1                                   A bill to be entitled  
2           An act relating to limited liability companies;  
3           amending ss. 608.401, 608.402, 608.403,  
4           608.404, 608.406, 608.407, 608.408, 608.4081,  
5           608.4082, 608.409, 608.4101, 608.411, 608.415,  
6           608.416, 608.4211, 608.422, 608.4225, 608.423,  
7           608.4231, 608.4232, 608.425, 608.426, 608.4261,  
8           608.427, 608.428, 608.432, 608.433, 608.434,  
9           608.436, 608.4362, 608.4363, 608.437, 608.438,  
10          608.4381, 608.4383, 608.4384, 608.441,  
11          608.4421, 608.444, 608.447, 608.448, 608.4481,  
12          608.449, 608.4492, 608.4511, 608.452, 608.455,  
13          608.463, 608.471, 608.502, 608.503, 608.504,  
14          608.505, 608.507, 608.508, 608.512, 608.5135,  
15          F.S.; revising provisions of chapter 608, F.S.,  
16          relating to limited liability companies;  
17          clarifying and updating such provisions to  
18          reflect current operating procedures; providing  
19          for requirements, limitations, procedures,  
20          rights, liabilities, reports, fees, and  
21          penalties; creating s. 608.4115, F.S.;  
22          providing for correcting certain articles of  
23          organization; providing for effect; creating s.  
24          608.4226, F.S.; providing for resolving  
25          conflicts of interest; creating s. 608.4235,  
26          F.S.; providing for agency of members and  
27          managers; creating s. 608.4236, F.S.; providing  
28          for delegation of rights and powers to manage;  
29          creating s. 608.4237, F.S.; providing for  
30          membership termination upon bankruptcy;  
31          creating s. 608.439, F.S.; providing for

1 conversion of certain entities to a limited  
2 liability company; creating s. 608.601, F.S.;  
3 providing for member's derivative actions;  
4 creating ss. 608.701, 608.702, and 608.703,  
5 F.S.; providing for application of certain case  
6 law for certain purposes; providing for  
7 receiving certificates and certified copies  
8 into evidence; providing for interrogatories by  
9 the Department of State; repealing s. 608.4062,  
10 F.S., relating to foreign limited liability  
11 companies; repealing s. 608.412, F.S., relating  
12 to supplemental affidavit of capital  
13 contributions; repealing s. 608.424, F.S.,  
14 relating to contracting debts; repealing s.  
15 608.4494, F.S., relating to deposit with the  
16 Department of Banking and Finance; providing an  
17 effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

21 Section 1. Sections 608.401, 608.402, 608.403,  
22 608.404, 608.408, 608.4081, 608.4082, 608.409, 608.4101,  
23 608.411, 608.415, 608.416, 608.4211, 608.422, 608.4225,  
24 608.423, 608.4231, 608.4232, 608.425, 608.426, 608.4261,  
25 608.427, 608.428, 608.432, 608.433, 608.434, 608.441,  
26 608.4421, 608.444, 608.447, 608.448, 608.4481, 608.449,  
27 608.4492, 608.4511, 608.452, 608.455, 608.463, 608.502,  
28 608.503, 608.504, 608.505, 608.507, 608.508, 608.512,  
29 608.5135, Florida Statutes, and sections 608.406, 608.407,  
30 608.438, 608.4381, 608.4383, 608.4384, and 608.471, Florida  
31 Statutes, 1998 Supplement, are amended, sections 608.436,

1 608.4362, 608.4363, and 608.437, Florida Statutes, are  
2 transferred and renumbered as sections 608.4227, 608.4228,  
3 608.4229, and 608.4238, Florida Statutes, respectively, and  
4 amended, and sections 608.4115, 608.4226, 608.4235, 608.4236,  
5 608.4237, 608.439, 608.601, 608.701, 608.702, and 608.703,  
6 Florida Statutes, are created, to read:

7           608.401 Short title.--Sections 608.401-608.703  
8 ~~608.514~~ may be cited as the "Florida Limited Liability Company  
9 Act."

10           608.402 Definitions.--As used in this chapter:

11           (1) "Articles of merger" means initial, amended, and  
12 restated articles of merger of a limited liability company  
13 delivered to the Department of State in accordance with s.  
14 608.4382. In the case of a foreign limited liability company,  
15 the term includes all records serving a similar function  
16 required to be filed with the Department of State or other  
17 official having custody of company records in the state or  
18 country under whose law it is organized.

19           (2) "Articles of organization" means initial, amended,  
20 and restated articles of organization of a limited liability  
21 company, including initial, amended, or restated articles of  
22 merger, if any. In the case of a foreign limited liability  
23 company, the term includes all records serving a similar  
24 function required to be filed with the Department of State or  
25 other official having custody of company records in the state  
26 or country under whose law it is organized.

27           (3) "Authorized representative" means one or more  
28 persons acting to form a limited liability company by  
29 executing and filing the articles of organization of such  
30 limited liability company in accordance with this chapter and  
31 authorized by a member identified in the articles of

1 organization or operating agreement of such limited liability  
2 company, which authorized representative may, but need not be,  
3 a member of the limited liability company that the authorized  
4 representative forms.

5 (4)(1) "Bankruptcy" means an event that causes a  
6 person to cease to be a member as provided in s. 608.4237.

7 ~~"Bankrupt" means a debtor under the federal bankruptcy law or~~  
8 ~~insolvent under any state insolvency act.~~

9 (5)(2) "Business" means every trade, occupation, or  
10 profession and other lawful business, purpose, or activity,  
11 whether or not carried on for profit.

12 (6)(3) "Capital account" means the agreed value of the  
13 initial contributions as provided in s. 608.4211, increased by  
14 the agreed value of subsequent contributions amounts  
15 subsequently contributed to capital, if any, and reduced by  
16 distributions of capital, unless otherwise provided in the  
17 articles of organization or the operating agreement  
18 regulations, additional contributions or distributions of  
19 capital shall only be upon agreement of all the members.  
20 ~~Unless otherwise provided in the articles of organization or~~  
21 ~~the regulations, the capital account of a member shall be~~  
22 ~~adjusted to reflect a default in the payment of any amount~~  
23 ~~previously agreed to be contributed.~~

24 (7) "Contribution" means any cash, property, or  
25 services rendered, or a promissory note or other obligation to  
26 contribute cash or property or to perform services, which a  
27 person contributes to the limited liability company as a  
28 member.

29 (8)(4) "Conveyance" means any assignment, transfer,  
30 sale, lease, mortgage, hypothecation, or encumbrance.

31

1           ~~(9)(5)~~ "Court" includes every court and judge having  
2 jurisdiction in the action.

3           (10) "Distribution" means a direct or indirect  
4 transfer of money or other property or incurrence of  
5 indebtedness by a limited liability company to or for the  
6 benefit of its members in respect of their economic interests.

7           ~~(11)(6)~~ "Entity" means, without limitation, includes  
8 any corporation or foreign corporation, as such terms are  
9 defined in s. 607.01401; unincorporated association or  
10 business; limited liability company; business trust, real  
11 estate investment trust, common law trust, or other  
12 partnership, trust, general partnership, limited liability  
13 partnership, limited partnership, limited liability limited  
14 partnership, joint venture, or two or more persons having a  
15 joint or common economic interest; any or state, local,  
16 federal, or foreign government, governmental subdivision,  
17 agency, or instrumentality; or any other domestic or foreign  
18 entity that is formed pursuant to the provisions of applicable  
19 law governments.

20           (12) "Foreign limited liability company" means a  
21 limited liability company formed under the laws of any state  
22 other than Florida or under the laws of any foreign country or  
23 other foreign jurisdiction.

24           ~~(13)(7)~~ "Individual" means a natural person and  
25 includes the estate of a natural person ~~an incompetent or~~  
26 ~~deceased individual.~~

27           (14) "Insolvent" means the inability of a limited  
28 liability company to pay the company's debts as they become  
29 due in the ordinary course of business or that the fair value  
30 of the company's total assets would be less than the sum of  
31 its total liabilities plus the amount that would be needed, if

1 the company were to be dissolved and terminated at the time of  
2 the distribution, to satisfy the preferential distribution  
3 rights of the company's members accrued through such  
4 dissolution and termination.

5 (15) "Knowledge" means a person's actual knowledge of  
6 a fact, and does not include constructive knowledge of a fact.

7 (16)(8) "Limited liability company" or "company" means  
8 a limited liability company organized and existing under this  
9 chapter.

10 (17) "Majority-in-interest of the members" means,  
11 unless otherwise provided in the articles of organization or  
12 operating agreement, members owning more than 50 percent of  
13 the then-current percentage or other interest in the profits  
14 of the limited liability company.

15 (18) "Manager" means a person who is appointed or  
16 elected to manage a manager-managed company and, unless  
17 otherwise provided in the articles of organization or  
18 operating agreement, a manager may be, but need not be, a  
19 member of the limited liability company.

20 (19) "Manager-managed company" means a limited  
21 liability company which is designated to be managed by  
22 managers in its articles of organization or operating  
23 agreement.

24 (20)(9) "Managing member" means, with respect to a  
25 limited liability company that has set forth in its articles  
26 of organization that it is to be managed by its members, a  
27 member appointed or elected as a managing member of a  
28 member-managed company the limited liability company pursuant  
29 to and in accordance with the articles of organization or  
30 regulations of the limited liability company.

31

1           ~~(21)(10)~~ "Member" means any person who has been  
2 admitted to a limited liability company as a member as  
3 provided in s. 608.4232 and has an economic equity interest in  
4 a limited liability company represented by a capital account  
5 or, in the case of a foreign limited liability company, has  
6 been admitted to a limited liability company as a member in  
7 accordance with the laws of the state or foreign country or  
8 other foreign jurisdiction under which the foreign limited  
9 liability company is organized.

10           (22) "Member-managed company" means a limited  
11 liability company other than a manager-managed company.

12           (23) "Membership interest," "member's interest," or  
13 "interest" means a member's share of the profits and the  
14 losses of the limited liability company, the right to receive  
15 distributions of the limited liability company's assets,  
16 voting rights, management rights, or any other rights under  
17 this chapter or the articles of organization or operating  
18 agreement.

19           ~~(24)(13)~~ "Operating agreement" ~~"Regulations"~~ means  
20 written or oral provisions which are adopted for the  
21 management and regulation of the affairs of the limited  
22 liability company and which set forth the relationships of the  
23 members, managers, and limited liability company. The term  
24 includes amendments to the operating agreement, subject to s.  
25 608.423.

26           ~~(25)(11)~~ "Person" means an individual or an entity.

27           (26) "Personal or other legal representative" means,  
28 as to a natural person, the executor, administrator, guardian,  
29 conservator, or other legal representative of the natural  
30 person and, as to a person other than a natural person, the  
31 legal representative or successor of such person.

1           ~~(12) "Real property" means land and any interest or~~  
2 ~~estate in land.~~

3           ~~(14) "Relative capital account" means, for a member, a~~  
4 ~~ratio the numerator of which is the capital account of that~~  
5 ~~member and the denominator of which is the total of the~~  
6 ~~capital accounts of all members.~~

7           608.403 Purpose.--A limited liability company may be  
8 organized under this chapter for any lawful purpose, but  
9 remains subject to except that special statutes and  
10 regulations of the laws of this state for regulating the  
11 regulation and controlling its control of specific types of  
12 business, which shall control when in conflict with this  
13 chapter herewith.

14           608.404 Powers.--Unless its articles of organization  
15 or operating agreement regulations provide otherwise, each  
16 limited liability company organized and existing under this  
17 chapter shall have the same powers as an individual to do all  
18 things necessary to carry out its business and affairs,  
19 including, without limitation, the power to:

20           (1) Sue and or be sued, and or ~~complain or~~ defend, in  
21 its name.

22           (2) Purchase, ~~take,~~ receive, lease, ~~subscribe for,~~ or  
23 otherwise acquire, own, hold, improve, ~~vote,~~ use, and or  
24 otherwise deal ~~in or~~ with real or personal property, or ~~an~~  
25 ~~interest in real or personal property or~~ any legal or  
26 equitable interest in property, wherever located.

27           (3) Sell, convey, mortgage, grant ~~pledge,~~ create a  
28 security interest in, lease, exchange, and ~~lend,~~ or otherwise  
29 encumber or dispose of, all or any part of its property ~~or~~  
30 ~~assets.~~

31



1           (4) Purchase, receive, subscribe for, or otherwise  
2 acquire, own, hold, vote, use, sell, mortgage, lend, grant a  
3 security interest in, or otherwise dispose of and deal in and  
4 with, shares or other interests in or obligations of any other  
5 entity.

6           (5)~~(4)~~ Make contracts or guarantees, or incur  
7 liabilities; borrow money; issue its notes, bonds, or other  
8 obligations, which may be convertible into or include the  
9 option to purchase other securities of the limited liability  
10 company; ~~secure any of its obligations by mortgage or pledge~~  
11 ~~of all or any part of its property, franchises, and income;~~ or  
12 make contracts of guaranty and suretyship which are necessary  
13 or convenient to the conduct, promotion, or attainment of the  
14 business of a corporation the majority of the outstanding  
15 stock of which is owned, directly or indirectly, by the  
16 contracting limited liability company; a corporation which  
17 owns, directly or indirectly, a majority of the outstanding  
18 membership interests ~~stock~~ of the contracting limited  
19 liability company; or a corporation the majority of the  
20 outstanding stock of which is owned, directly or indirectly,  
21 by a corporation which owns, directly or indirectly, the  
22 majority of the outstanding membership interests ~~stock~~ of the  
23 contracting limited liability company, which contracts of  
24 guaranty and suretyship shall be deemed to be necessary or  
25 convenient to the conduct, promotion, or attainment of the  
26 business of the contracting limited liability company; or make  
27 other contracts of guaranty and suretyship which are necessary  
28 or convenient to the conduct, promotion, or attainment of the  
29 business of the contracting limited liability company.

30  
31

1           ~~(6)~~(5) Lend money, invest or reinvest its funds, and  
2 ~~or~~ receive and hold real or personal property as security for  
3 repayment.

4           ~~(7)~~(6) Conduct its business, locate offices, and  
5 exercise the powers granted by this chapter within or without  
6 this state.

7           ~~(8)~~(7) Select ~~Elect or appoint~~ managers and appoint  
8 officers, directors, employees, and agents of the limited  
9 liability company, define their duties, fix their  
10 compensation, and lend them money and credit.

11           ~~(8)~~ ~~Make and amend its regulations, not inconsistent~~  
12 ~~with its articles of organization or with the laws of this~~  
13 ~~state, for the administration and regulation of the affairs of~~  
14 ~~the company.~~

15           (9) Make donations for ~~to~~ the public welfare or for  
16 charitable, scientific, or educational purposes.

17           ~~(10)~~ ~~Indemnify a member or manager or any other person~~  
18 ~~as provided in this chapter against expenses actually and~~  
19 ~~reasonably incurred by him or her or it in connection with the~~  
20 ~~defense of an action, suit, or proceeding, whether civil or~~  
21 ~~criminal, in which he or she or it is made a party.~~

22           ~~(11)~~ ~~Cease its activities and surrender its~~  
23 ~~certificate of organization.~~

24           ~~(12)~~ ~~Have and exercise all powers necessary or~~  
25 ~~convenient to effect any or all of the purposes for which the~~  
26 ~~company is organized.~~

27           ~~(13)~~ ~~Transact any lawful business that will aid~~  
28 ~~governmental policy.~~

29           ~~(10)~~(14) Pay pensions and establish pension plans,  
30 pension trusts, profit-sharing plans, bonus plans, option  
31 plans, and benefit or ~~other~~ incentive plans for any or all of

1 | its current or former managers, members, officers, agents, and  
2 | employees.

3 |       ~~(11)(15)~~ Be a promoter, incorporator, shareholder,  
4 | partner, member, associate, or manager of any corporation,  
5 | partnership, ~~limited partnership, limited liability company,~~  
6 | joint venture, trust, or other entity.

7 |       ~~(12)(16)~~ Make payments or donations or do any other  
8 | act not inconsistent with law that furthers the business ~~and~~  
9 | ~~affairs~~ of the limited liability company.

10 |       608.406 Limited liability company name.--

11 |       (1) A limited liability company name:

12 |       (a) Must contain the words "limited liability company"  
13 | or "limited company," or the abbreviations ~~their abbreviation~~  
14 | "L.L.C." or "L.C.," or the designations "LLC" or "LC" as shall  
15 | ~~be~~ the last words of the name of every limited liability  
16 | company formed under the provisions of this chapter. The word  
17 | "limited" may be abbreviated as "Ltd." and the word "company"  
18 | may be abbreviated as "Co." Omission of the words "limited  
19 | liability company" or "limited company," the abbreviations  
20 | "L.L.C." or "L.C.," or the designations "LLC" or "LC" in the  
21 | use of the name of the limited liability company shall render  
22 | any person who knowingly participates in the omission, or  
23 | knowingly acquiesces in the omission, liable for any  
24 | indebtedness, damage, or liability caused by the omission.

25 |       ~~(b)(2)~~ ~~The limited liability name~~ May not contain  
26 | language stating or implying that the limited liability  
27 | company is organized for a purpose other than that permitted  
28 | in this chapter ~~act~~ and its articles of organization.

29 |       ~~(c)(3)~~ ~~The limited liability name~~ May not contain  
30 | language stating or implying that the limited liability  
31 | company is connected with a state or federal government agency

1 or a corporation or other entity chartered under the laws of  
2 the United States.

3 ~~(2)(4)~~ The name of the limited liability company shall  
4 be filed with the Department of State for public notice only  
5 and shall not alone create any presumption of ownership beyond  
6 that which is created under the common law. The Department of  
7 State shall record the name without regard to any other name  
8 recorded. ~~The limited liability name must be distinguishable~~  
9 ~~upon the records of the Division of Corporations of the~~  
10 ~~Department of State from all other entities or filings, except~~  
11 ~~fictitious name registrations pursuant to s. 865.09, organized~~  
12 ~~or registered under the laws of this state that are on file~~  
13 ~~with the division.~~

14 ~~(5) Omission of the words "limited liability company"~~  
15 ~~or "limited company," or their abbreviation "L.L.C." or~~  
16 ~~"L.C.," in the use of the name of the limited liability~~  
17 ~~company shall render any person who participates in the~~  
18 ~~omission, or knowingly acquiesces in it, liable for any~~  
19 ~~indebtedness, damage, or liability occasioned by the omission.~~

20 608.407 Articles of organization.--

21 (1) In order to form a limited liability company,  
22 articles of organization of a limited liability company shall  
23 be executed and filed with the Department of State by one or  
24 more members or authorized representatives of the company.

25 The articles of organization shall set forth:

26 (a) The name of the limited liability company.

27 ~~(b) The period of its duration, which may be~~  
28 ~~perpetual.~~

29 ~~(b)(c)~~ The mailing address and the street address of  
30 the principal office of the limited liability company.

31

1           ~~(c)(d)~~ The name and street address of its initial  
2 registered agent for service of process in the state. The  
3 articles of organization shall include or be accompanied by  
4 the written statement required by s. 608.415.~~together with a~~  
5 ~~statement in writing in such form and manner as shall be~~  
6 ~~prescribed by the Department of State accepting the~~  
7 ~~appointment as a registered agent simultaneously with his or~~  
8 ~~her being designated. Such statement of acceptance shall~~  
9 ~~state that the registered agent is familiar with, and accepts,~~  
10 ~~the obligations of that position.~~

11           ~~(e)~~ The right, if given, of the members to admit  
12 additional members and the terms and conditions of the  
13 admissions.

14           ~~(f)~~ The right, if given, of the remaining members of  
15 the limited liability company to continue the business on the  
16 death, retirement, resignation, expulsion, bankruptcy, or  
17 dissolution of a member or the occurrence of any other event  
18 which terminates the continued membership of a member in the  
19 limited liability company.

20           ~~(d)(g)1.~~ If the limited liability company is to be  
21 managed by one ~~a manager~~ or more managers, a statement that  
22 the company is to be a manager-managed company ~~managed by a~~  
23 ~~manager or managers and the names and addresses of such~~  
24 ~~managers who are to serve as managers until the first annual~~  
25 ~~meeting of members or until their successors are elected and~~  
26 ~~qualify.~~

27           ~~2.~~ If the management of a limited liability company is  
28 reserved to the members, a statement to that effect and the  
29 names and addresses of the managing members.

30           ~~(e)(h)~~ Any other matters that the members elect  
31 determine to include in the articles of organization therein.

1           ~~(2) An affidavit declaring that the limited liability~~  
2 ~~company has at least one member and setting forth the amount~~  
3 ~~of the cash and a description and agreed value of property~~  
4 ~~other than cash contributed by the members and the amount~~  
5 ~~anticipated to be contributed by the members shall accompany~~  
6 ~~the articles of organization of a limited liability company.~~

7           (2)(3) A limited liability company is formed at the  
8 time described in s. 608.409 if the person filing the articles  
9 of organization has substantially complied ~~there has been~~  
10 ~~substantial compliance~~ with the requirements of this section.

11           (3)(4) The articles of organization shall ~~must~~ be  
12 executed by at least one member or the authorized  
13 representative of a member.

14           608.408 Execution of certificate or statement.--

15           (1) A certificate or statement required by this  
16 chapter to be filed with the Department of State must be  
17 executed in the following manner:

18           (a) If it is the articles ~~an original certificate~~ of  
19 organization, ~~an affidavit, a supplemental affidavit, a~~  
20 certificate of conversion ~~amendment~~, or a statement of change  
21 of registered agent or registered office, it must be signed by  
22 a member or by the authorized representative of a member, and  
23 by the new registered agent, if applicable; and

24           (b) If it is a certificate of dissolution or  
25 revocation of dissolution, it must be signed by ~~all~~ members  
26 having the same percentage of membership interests necessary  
27 to approve the dissolution or revocation of dissolution.

28           (2) Any person may sign a certificate through ~~by~~ an  
29 attorney in fact, but a power of attorney to sign a  
30 certificate or statement authorizing ~~relating to~~ the admission  
31 of a member must specifically describe the admission.

1           (3) The execution of a certificate ~~by a member~~  
2           constitutes an affirmation by the person executing the  
3           certificate, under the penalties of perjury, that the facts  
4           stated therein are true.

5           (4) If the articles of organization contain or any  
6           other document authorized or required to be filed under this  
7           chapter contains a false statement, one who suffers loss by  
8           reliance on the statement may recover damages for the loss  
9           from a person who signed the record or caused another to sign  
10          it on the person's behalf and knew the statement to be false  
11          at the time the record was signed.

12           608.4081 Filing requirements.--

13          (1) To be filed by the Department of State, a document  
14          must satisfy the following requirements, as supplemented or  
15          modified by of this section and of any other section of this  
16          chapter:that adds to or varies these requirements to be  
17          entitled to filing by the Department of State.

18          (a)(2) This chapter act must require or permit filing  
19          the document by in the office of the Department of State.

20          (b)(3) The document must be executed as required by s.  
21          608.407 contain the information required by this act. It may  
22          contain other information as well.

23          (c) The document must contain any information required  
24          by this chapter and may contain other information the company  
25          elects to include.

26          (d)(4) The document must be typewritten or printed and  
27          must be legible.

28          (e)(5) The document must be in the English language.  
29          A limited liability company name need not be in English if  
30          written in English letters or Arabic or Roman numerals, and  
31          the certificate of existence ~~status~~ required of a foreign

1 limited liability company ~~companies~~ need not be in English if  
2 accompanied by a reasonably authenticated English translation.

3 (f)~~(6)~~ If the Department of State has prescribed a  
4 mandatory form for the document, the document must be in or on  
5 the prescribed form.

6 (g)~~(7)~~ The document must be delivered to the ~~office of~~  
7 ~~the~~ Department of State for filing, ~~may be accompanied by one~~  
8 ~~exact or conformed copy,~~ and must be accompanied by the  
9 correct filing fee and any other tax or penalty required by  
10 this chapter ~~act~~ or other law.

11 (2) The document may be accompanied by one exact or  
12 conformed copy.

13 (3) Any signature on any certificate authorized to be  
14 filed by the Department of State under any provision of this  
15 chapter may be a facsimile, a conformed signature, or an  
16 electronically transmitted signature.

17 608.4082 Filing duties of Department of State.--

18 (1) The Department of State files a document by  
19 stamping or otherwise endorsing the document as "filed,"  
20 together with the Secretary of State's official title and the  
21 date and time of receipt. After filing a document, the  
22 Department of State shall deliver an acknowledgment or  
23 certified copy of the document to the domestic or foreign  
24 limited liability company or its representative.

25 (2) ~~If~~ The Department of State ~~refuses to file a~~  
26 ~~document, it~~ shall return any document the department refuses  
27 to file it to the domestic or foreign limited liability  
28 company or its representative within 15 days after the  
29 document was received for filing, together with a brief,  
30 written explanation of the reason for refusal.

31



1           (3) If the applicant returns the document with  
2 corrections in accordance with the rules of the Department of  
3 State within 60 days after it was mailed to the applicant by  
4 the Department of State and if at the time of return the  
5 applicant so requests in writing, the filing date of the  
6 document shall be the filing date that would have been applied  
7 had the original document not been deficient, except as to  
8 persons who justifiably relied on the record before correction  
9 and were adversely affected thereby.

10           (4)~~(3)~~ The Department of State's duty to file  
11 documents under this section is ministerial. ~~The~~ Filing or  
12 refusing to file a document does not:

13           (a) Affect the validity or invalidity of the document  
14 in whole or part;

15           (b) Relate to the correctness or incorrectness of  
16 information contained in the document; or

17           (c) Create a presumption that the document is valid or  
18 invalid or that information contained in the document is  
19 correct or incorrect.

20           (5)~~(4)~~ If not otherwise provided by law and the  
21 provisions of this chapter act, the Department of State shall  
22 determine, by rule, the appropriate format for, number of  
23 copies of, manner of execution of, method of electronic  
24 transmission of, and amount of and method of payment of fees  
25 for, any document placed under its jurisdiction.

26           ~~(5) If a document is determined by the Department of~~  
27 ~~State to be incomplete and inappropriate for filing, the~~  
28 ~~Department of State may return the document to the person or~~  
29 ~~limited liability company filing it, together with a brief~~  
30 ~~written explanation of the reason for the refusal to file. If~~  
31 ~~the applicant returns the document with corrections in~~

1 ~~accordance with the rules of the department within 60 days~~  
2 ~~after it was mailed to the applicant by the department and if~~  
3 ~~at the time of return the applicant so requests in writing,~~  
4 ~~the filing date of the document will be the filing date that~~  
5 ~~would have been applied had the original document not been~~  
6 ~~deficient, except as to persons who justifiably relied on the~~  
7 ~~record before correction and were adversely affected thereby.~~

8 ~~(6) Unless otherwise permitted by this act, a delayed~~  
9 ~~effective date for a document may not be later than the 90th~~  
10 ~~day after the date on which it is filed.~~

11 608.409 Effect of filing and issuance of time and date  
12 endorsement on the articles ~~certificate~~ of organization.--

13 (1) Unless a delayed effective date is specified, the  
14 limited liability company's existence begins at the date and  
15 time when the articles of organization are filed, as evidenced  
16 by the Department of State's date and time endorsement on the  
17 original document, or on a date specified in the articles of  
18 organization, if such date is within 5 business days prior to  
19 the date of filing.

20 (2) The articles of organization may specify a delayed  
21 effective time and date of commencement of the company's  
22 existence, and if so specified ~~they do~~, the articles of  
23 organization shall become effective, and the company's  
24 existence shall commence, at the time and date specified. If a  
25 delayed effective date, but no time, is specified, the  
26 articles of organization shall become effective, and the  
27 company's existence shall commence, at the close of business  
28 on the delayed effective ~~that~~ date. Unless otherwise permitted  
29 by this chapter, a delayed effective date for a document may  
30 not be later than the 90th day after the date on which the  
31 document is filed.

1           (3) The Department of State's filing of the articles  
2 of organization is conclusive proof that all conditions  
3 precedent to organization have been satisfied except in a  
4 proceeding by the state to cancel or revoke the organization  
5 or to administratively dissolve the organization.

6           (4) A limited liability company shall not transact  
7 business or incur indebtedness, except that which is  
8 incidental to its organization or to obtaining subscriptions  
9 for or payment of contributions, until the articles of  
10 organization have been filed by the Department of State.

11           608.4101 Records to be kept; right to information.--

12           (1) Each limited liability company shall keep at its  
13 principal ~~registered~~ office the following records:

14           (a) A current list of the full names and last known  
15 business, residence, or mailing addresses of all members and  
16 managers.

17           (b) A copy of the articles of organization and all  
18 certificates of conversion ~~amendments thereto~~, together with  
19 executed copies of any powers of attorney pursuant to which  
20 any articles of organization or certificates were ~~certificate~~  
21 ~~was~~ executed.

22           (c) Copies of the limited liability company's federal,  
23 state, and local income tax returns and reports, if any, for  
24 the 3 most recent years.

25           (d) Copies of any then-effective operating agreement  
26 ~~regulations~~ and any financial statements of the limited  
27 liability company for the 3 most recent years.

28           (e) Unless contained in the articles of organization  
29 or the operating agreement ~~regulations~~, a writing setting out:

30           1. The amount of cash and a description and statement  
31 of the agreed value of any ~~the~~ other property or services

1 contributed by each member and which each member has agreed to  
2 contribute.

3           2. The times at which or events on the happening of  
4 which any additional contributions agreed to be made by each  
5 member are to be made.

6           3. Any events upon the happening of which the limited  
7 liability company is to be dissolved and its affairs wound up.

8           (2) A limited liability company shall provide members  
9 and their agents and attorneys access to its records at the  
10 company's principal office or other reasonable locations  
11 specified in the operating agreement. The company shall  
12 provide former members and their agents and attorneys access  
13 for proper purposes to records pertaining to the period during  
14 which they were members. The right of access provides the  
15 opportunity to inspect and copy records during ordinary  
16 business hours. The company may impose a reasonable charge,  
17 limited to the costs of labor and material, for copies of  
18 records furnished.~~Records kept under this section are subject~~  
19 ~~to inspection and copying during ordinary business hours at~~  
20 ~~the reasonable request, and at the expense, of any member.~~

21           (3) A limited liability company shall furnish to a  
22 member, and to the legal representative of a deceased member  
23 or member under legal disability:

24           (a) Without demand, information concerning the  
25 company's business or affairs reasonably required for the  
26 proper exercise of the member's rights and performance of the  
27 member's duties under the operating agreement or this chapter;  
28 and

29           (b) On demand, other information concerning the  
30 company's business or affairs, except to the extent that the  
31

1 demand or the information demanded is unreasonable or  
2 otherwise improper under the circumstances.

3 (4) Each manager shall have the right to examine all  
4 of the information described in subsection (1) for a purpose  
5 reasonably related to his or her position as a manager. The  
6 manager of a limited liability company shall have the right to  
7 keep confidential from the members, for such period of time as  
8 the manager deems reasonable, any information which the  
9 manager reasonably believes to be in the nature of trade  
10 secrets or other information the disclosure of which the  
11 manager in good faith believes is not in the best interest of  
12 the limited liability company or could damage the limited  
13 liability company or its business or which the limited  
14 liability company is required by law or by agreement with a  
15 third party to keep confidential.

16 (5) A limited liability company may maintain its  
17 records in other than a written form if such form is capable  
18 of conversion into written form within a reasonable time.

19 (6) Any action to enforce any right arising under this  
20 section shall be brought in the appropriate circuit court.

21 608.411 Amendments to or restatements of articles of  
22 organization.--

23 (1) The articles of organization of a limited  
24 liability company are amended by filing the articles ~~a~~  
25 ~~certificate~~ of amendment thereto with the Department of State.  
26 The articles ~~certificate~~ of amendment shall set forth:

27 (a) The name of the limited liability company.

28 (b) The date of filing of the articles of  
29 organization.

30 (c) The amendment to the articles of organization.

31

1           ~~(2) Within 30 days after the happening of any of the~~  
2 ~~following events, an amendment to the articles of~~  
3 ~~organization, indicating the occurrence of the event or~~  
4 ~~events, shall be filed:~~

5           ~~(a) There is a change in the name of the limited~~  
6 ~~liability company.~~

7           ~~(b) There is a false or erroneous statement in the~~  
8 ~~articles of organization.~~

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

12           ~~(d) A time is fixed for the dissolution of the limited~~  
13 ~~liability company, if no time is specified in the articles of~~  
14 ~~organization.~~

15           ~~(e) The members desire to make a change in any other~~  
16 ~~statement in the articles of organization in order for it to~~  
17 ~~accurately represent the agreement between them.~~

18           ~~(2)(3)~~ Unless otherwise provided in this chapter or in  
19 the articles ~~certificate~~ of amendment, the articles a  
20 ~~certificate~~ of amendment shall be effective when filed at the  
21 ~~time of its filing~~ with the Department of State.

22           ~~(3)(4)~~ A limited liability company may, whenever  
23 desired, integrate into a single instrument all ~~of the~~  
24 provisions of its articles of organization ~~which are~~ then in  
25 effect and operative as a result of there having theretofore  
26 ~~been filed with the department one or more certificates or~~  
27 ~~other instruments pursuant to any of the provisions referred~~  
28 ~~to in this section,~~ and it may at the same time further amend  
29 its articles of organization by adopting restated articles of  
30 organization which meet all the requirements of s. 608.407.

31

1           ~~(4)(5)~~ If the restated articles of organization merely  
2 restate and integrate but do not further amend the  
3 then-effective initial articles of organization ~~as theretofore~~  
4 ~~amended or supplemented by any instrument that was executed~~  
5 ~~and filed pursuant to any of the provisions of this section,~~  
6 the company it shall title the filing ~~be specifically~~  
7 ~~designated in its heading as the "Restated Articles of~~  
8 ~~Organization," together with such other words as the limited~~  
9 ~~liability company deems may deem appropriate, and shall be~~  
10 ~~executed as provided in this chapter for articles of~~  
11 ~~organization and filed as provided by this chapter with the~~  
12 ~~department.~~ If the restated articles restate and integrate  
13 and also further amend in any respect the then-effective  
14 articles of organization, the company ~~as theretofore amended~~  
15 ~~or supplemented, they shall title the filing ~~be specifically~~  
16 ~~designated in their heading as the "Amended and Restated~~  
17 ~~Articles of Organization," together with such other words as~~  
18 ~~the limited liability company deems may deem appropriate.~~ In  
19 each case described in this subsection, the document ~~and~~ shall  
20 be executed as provided in this chapter for articles of  
21 organization and filed as provided by this chapter with the  
22 Department of State.~~

23           ~~(5)(6)~~ Restated articles of organization shall state,  
24 either in their heading or in an introductory paragraph, the  
25 limited liability company's present name, and, if it has been  
26 changed, the name under which it was originally filed; the  
27 date of filing of its original articles of organization with  
28 the Department of State; and any the future effective date or  
29 time if other than the date and time of, ~~which shall be a date~~  
30 ~~or time certain, of the restated articles if it is not to be~~  
31 ~~effective upon~~ the filing of the restated articles of

1 organization. Restated articles of organization shall also  
2 state that they were duly executed and are being filed in  
3 accordance with this section. If the restated articles of  
4 organization only restate and integrate and do not further  
5 amend the limited liability company's articles of organization  
6 as theretofore amended or supplemented and there is no  
7 discrepancy between those provisions and the restated articles  
8 of organization, they shall state that fact as well.

9 ~~(6)(7)~~ Upon the filing of the restated articles of  
10 organization with the Department of State, or upon any ~~the~~  
11 future effective date or time provided in ~~of~~ restated articles  
12 of organization ~~as provided for therein~~, the ~~initial~~ articles  
13 of organization existing prior to such filing, ~~as theretofore~~  
14 ~~amended or supplemented~~, shall be superseded and; ~~thenceforth~~,  
15 the restated articles of organization, including any further  
16 amendment or changes made thereby, shall become ~~be~~ the  
17 company's articles of organization. ~~of the limited liability~~  
18 ~~company~~, ~~but~~ The original effective date of the company's  
19 formation shall remain unchanged.

20 ~~(7)(8)~~ Any amendment or change effected in connection  
21 with the restatement and integration of the articles of  
22 organization shall be subject to any other provisions of this  
23 chapter, not inconsistent with this section, which would apply  
24 if ~~a~~ separate articles ~~certificate~~ of amendment were filed to  
25 effect such amendment or change.

26 608.4115 Correcting the articles of organization filed  
27 of record.--

28 (1) A limited liability company or foreign limited  
29 liability company may correct the articles of organization  
30 filed of record with the Department of State within 30  
31



1 business days after filing if the record contains a false or  
2 erroneous statement or was defectively signed.

3 (2) The articles of organization filed of record are  
4 corrected:

5 (a) By preparing articles of correction that:

6 1. Describe the articles of organization filed of  
7 record, including their filing date, or attach a copy of the  
8 articles of organization to the articles of correction.

9 2. Specify the incorrect statement and the reason the  
10 statement is incorrect or the manner in which the signing was  
11 defective.

12 3. Correct the incorrect statement or defective  
13 signing.

14 (b) By delivering the articles of correction to the  
15 Department of State for filing.

16 (3) The articles of correction are effective  
17 retroactively to the effective date of the articles of  
18 organization they correct except as to persons relying on the  
19 uncorrected articles of organization and adversely affected by  
20 the correction. As to those persons, the articles of  
21 correction are effective when filed.

22 608.415 Registered office and registered agent.--

23 (1) Each limited liability company shall have and  
24 continuously maintain in this state:

25 (a) A registered office, which may be the same as its  
26 place of business; and

27 (b) A registered agent, which agent may be either:

28 1. An individual who resides in this state whose  
29 business office is identical with such registered office.

30 2. A foreign or domestic entity ~~corporation or limited~~  
31 ~~liability company~~ authorized to transact business in this

1 state, having a business office identical with such registered  
2 office.

3 (2) A registered agent or a successor registered agent  
4 appointed pursuant to s. 608.416 on whom process may be served  
5 shall each file a statement in writing with the Department of  
6 State accepting the appointment as registered agent  
7 simultaneously with being designated. Such statement or  
8 acceptance shall state that the registered agent is familiar  
9 with, and accepts, the obligations of that position as  
10 provided for in this chapter.

11 (3) The Department of State shall maintain an accurate  
12 record of the registered agents and registered office for the  
13 service of process and shall furnish any information disclosed  
14 thereby promptly upon request and payment of the required fee.

15 (4) A limited liability company may not prosecute,  
16 maintain, or defend any action in any court until the limited  
17 liability company complies with the provisions of this section  
18 and pays to the Department of State a penalty of \$5 for each  
19 day it has failed to comply or \$500, whichever amount is less,  
20 and pays any other amount required under this chapter.

21 608.416 Change of registered office or registered  
22 agent.--

23 (1) A limited liability company may change its  
24 registered office or agent by ~~upon~~ filing with the Department  
25 of State a statement setting forth:

26 (a) The name of the limited liability company.

27 (b) The street address of its current registered  
28 office.

29 (c) If the street address of its registered office is  
30 to be changed, the new street address ~~to which the registered~~  
31 ~~office is to be changed.~~

1 (d) If its current registered agent is to be changed,  
2 the name of the new registered agent and the new registered  
3 agent's written consent to the appointment, either on the  
4 statement or attached to it.

5 (e) That such change was authorized by affirmative  
6 vote of ~~a majority of~~ the members or as otherwise provided in  
7 the articles of organization or the operating agreement  
8 ~~regulations~~ of the limited liability company.

9 (2) Any registered agent may resign his or her agency  
10 appointment by signing and delivering for filing with the  
11 Department of State a statement of resignation and mailing a  
12 copy of such statement to the limited liability company at its  
13 principal office address shown in its most recently filed  
14 document. The agency is terminated and the registered office  
15 discontinued, if so provided, on the 31st day after the date  
16 on which the statement was filed with the Department of State.  
17 After receipt of the notice of the resignation of its  
18 registered agent, the limited liability company for which such  
19 registered agent was acting shall obtain and designate a new  
20 registered agent to take the place of the resigning registered  
21 agent.

22 (3) A registered agent may change the address of the  
23 registered office of any limited liability company for which  
24 such agent ~~his or hers~~ is the registered agency by notifying  
25 the limited liability company in writing of the change,  
26 signing, either manually or in facsimile, and delivering to  
27 the Department of State for filing a statement that complies  
28 with the requirements of paragraphs (1)(a)-(d), and reciting  
29 that the limited liability company has been notified of the  
30 change.

31

1           608.4211 Contributions to capital and liability for  
2 contribution.--

3           (1) The contribution of a member may be in cash,  
4 property, or services rendered, or a promissory note or other  
5 obligation to contribute cash or property or to perform  
6 services.

7           (2) A promise by a member to contribute to the limited  
8 liability company is not enforceable unless it is set out in  
9 writing signed by the member.

10           (3) Unless otherwise ~~Except as~~ provided in the  
11 articles of organization or operating agreement regulations, a  
12 member is obligated to the limited liability company to  
13 perform any enforceable promise to contribute cash or property  
14 or to perform services, even if the member ~~he or she~~ is unable  
15 to perform because of the member's ~~his or her~~ death or  
16 disability or any other reason. If a member does not make the  
17 required contribution of property or services, the member ~~he~~  
18 ~~or she~~ is obligated, at the option of the limited liability  
19 company, to contribute cash equal to that portion of the  
20 agreed value, as stated in the records of the limited  
21 liability company required to be kept pursuant to this  
22 chapter, of the stated contribution that has not been made.  
23 The foregoing option shall be in addition to, and not in lieu  
24 of, any other rights, including the right to specific  
25 performance, that the limited liability company may have  
26 against such member under the articles of organization or  
27 operating agreement or applicable law.

28           (4) Unless otherwise provided in the articles of  
29 organization or the operating agreement regulations, the  
30 obligation of a member to make a contribution or return money  
31 or other property paid or distributed in violation of this

1 chapter may be compromised only by consent of all the members.  
2 Notwithstanding the compromise, the creditor of a limited  
3 liability company, who extends credit or otherwise acts in  
4 reasonable reliance upon that obligation after the member has  
5 signed a writing that indicates the obligation and before the  
6 amendment or cancellation of the writing to indicate the  
7 compromise, may enforce the original obligation to the extent  
8 the creditor relied on the obligation when extending credit.

9 (5) The articles of organization or operating  
10 agreement ~~regulations~~ of a limited liability company may  
11 provide that the interest of any member who fails to make any  
12 contribution that the member ~~he or she~~ is obligated to make  
13 shall be subject to specified penalties for, or specified  
14 consequences of, such failure. Such penalties or consequences  
15 may take the form of reducing the defaulting member's  
16 proportionate membership interest in the limited liability  
17 company, subordinating the defaulting member's ~~his or her~~  
18 interest in the limited liability company to that of the  
19 nondefaulting members, a forced sale of the defaulting  
20 member's membership ~~limited liability company~~ interest, the  
21 forfeiture of the defaulting member's membership ~~limited~~  
22 ~~liability company~~ interest, the lending by other members of  
23 the amount necessary to meet the defaulting member's ~~his or~~  
24 ~~her~~ commitment, a fixing of the value of the defaulting  
25 member's membership ~~limited liability company~~ interest by  
26 appraisal or by formula and redemption or sale of the  
27 defaulting member's membership ~~limited liability company~~  
28 interest at such value, or other penalties or consequences.

29 608.422 Management of limited liability company.--

30 (1) ~~The management of the limited liability company,~~  
31 Unless otherwise provided in its ~~the~~ articles of organization

1 or the operating agreement, the company shall be a  
2 member-managed company.~~regulations, shall be vested in its~~  
3 ~~members in proportion to their contributions to the capital of~~  
4 ~~the limited liability company, as adjusted from time to time~~  
5 ~~to properly reflect any additional contributions or~~  
6 ~~withdrawals by the members; however,~~

7 (2) In a member-managed company:

8 (a) Unless otherwise provided in the articles of  
9 organization or operating agreement, management shall be  
10 vested in its members in proportion to the then-current  
11 percentage or other interest of members in the profits of the  
12 limited liability company owned by all of the members.

13 (b) Except as otherwise provided in subsection (3) or  
14 in this chapter, the decision of a majority-in-interest of the  
15 members shall be controlling.

16 (3) If the articles of organization or the operating  
17 agreement provide for the management of the limited liability  
18 company by a manager or managers, the management of the  
19 limited liability company shall ~~may~~ be vested in a manager or  
20 managers and the company shall be a manager-managed company.  
21 ~~who shall be elected annually by the members in the manner~~  
22 ~~prescribed by and provided in the articles of organization or~~  
23 ~~the regulations of the limited liability company. The manager~~  
24 ~~or managers shall also hold the offices and have the~~  
25 ~~responsibilities accorded to them by the members and set out~~  
26 ~~in the articles of organization or the regulations of the~~  
27 ~~limited liability company.~~

28 (4) In a manager-managed company:

29 (a) Each manager has equal rights in the management  
30 and conduct of the company's business.

31

1           (b) Except as otherwise provided in subsection (3) or  
2 in this chapter, any matter relating to the business of the  
3 company may be exclusively decided by the manager or, if there  
4 is more than one manager, by a majority of the managers.

5           (c) A manager:

6           1. Must be designated, appointed, elected, removed, or  
7 replaced by a vote, approval, or consent of a  
8 majority-in-interest of the members; and

9           2. Holds office until a successor has been elected and  
10 qualified, unless the manager sooner resigns or is removed.

11           (5) Action requiring the consent of members or  
12 managers under this chapter may be taken without a meeting,  
13 subject to the limitations of s. 608.4231.

14           (6) A member or manager may appoint a proxy to vote or  
15 otherwise act for the member or manager by signing an  
16 appointment instrument, either personally or by the member's  
17 or manager's attorney-in-fact.

18           (7) The manager or managers may also hold the offices  
19 and have such other responsibilities accorded to them by the  
20 members and set out in the articles of organization or the  
21 operating agreement of the limited liability company.

22           608.4225 General standards for managers and managing  
23 members.--

24           (1) Subject to ss. 608.423 and 608.4226, each manager  
25 and managing member shall owe a duty of loyalty and a duty of  
26 care to the limited liability company and the other members of  
27 the limited liability company.~~A manager or managing member~~  
28 ~~shall discharge his or her duties as a manager or managing~~  
29 ~~member, including his or her duties as a member of a~~  
30 ~~committee.~~

31           (a) The duty of loyalty includes, without limitation:

1           1. Accounting to the limited liability company and  
2 holding as trustee for the limited liability company any  
3 property, profit, or benefit derived by such manager or  
4 managing member in the conduct or winding up of the limited  
5 liability company business or derived from a use by such  
6 manager or managing member of limited liability company  
7 property, including the appropriation of a limited liability  
8 company opportunity.

9           2. Refraining from dealing with the limited liability  
10 company in the conduct or winding up of the limited liability  
11 company business as or on behalf of a party having an interest  
12 adverse to the limited liability company.

13           3. Refraining from competing with the limited  
14 liability company in the conduct of the limited liability  
15 company business before the dissolution of the limited  
16 liability company.~~In good faith.~~

17           (b) The duty of care is limited to refraining from  
18 engaging in grossly negligent or reckless conduct, intentional  
19 misconduct, or a knowing violation of law.~~With the care an~~  
20 ~~ordinarily prudent person in a like position would exercise~~  
21 ~~under similar circumstances.~~

22           (c) Each manager and managing member shall discharge  
23 the duties to the limited liability company and other members  
24 under this chapter or under the articles of organization or  
25 operating agreement and exercise any rights consistent with  
26 the obligation of good faith and fair dealing.~~In a manner he~~  
27 ~~or she reasonably believes to be in the best interests of the~~  
28 ~~limited liability company.~~

29           (d) A manager or managing member does not violate a  
30 duty or obligation under this chapter or under the articles of  
31 organization or operating agreement merely because the



1 manager's or managing member's conduct furthers such manager's  
2 or managing member's own interest.

3 (e) A manager or managing member may lend money to and  
4 transact other business with the company. As to each loan or  
5 transaction, the rights and obligations of the manager or  
6 managing member are the same as those of a person who is not a  
7 member, subject to other applicable law.

8 (f) This section applies to a person winding up the  
9 limited liability company business as the personal or other  
10 legal representative of the last surviving member as if such  
11 person were a manager or managing member.

12 (2) In discharging a manager's or managing member's  
13 ~~his or her~~ duties, a manager or managing member is entitled to  
14 rely on information, opinions, reports, or statements,  
15 including financial statements and other financial data, if  
16 prepared or presented by:

17 (a) One or more members or employees of the limited  
18 liability company whom the manager or managing member  
19 reasonably believes to be reliable and competent in the  
20 matters presented;

21 (b) Legal counsel, public accountants, or other  
22 persons as to matters the manager or managing member  
23 reasonably believes are within the persons' professional or  
24 expert competence; or

25 (c) A committee of managers, members, or managing  
26 members of which the affected manager or managing member ~~he or~~  
27 ~~she~~ is not a participant member if the manager or managing  
28 member reasonably believes the committee merits confidence.

29 (3) In discharging a manager's or managing member's  
30 ~~his or her~~ duties, a manager or managing member may consider  
31 such factors as the manager or managing member ~~he or she~~ deems

1 relevant, including the long-term prospects and interests of  
2 the limited liability company and its members, and the social,  
3 economic, legal, or other effects of any action on the  
4 employees, suppliers, customers of the limited liability  
5 company, the communities and society in which the limited  
6 liability company operates, and the economy of the state and  
7 the nation.

8 (4) A member, manager, or managing member is not  
9 acting in good faith if the member, manager, or managing  
10 member ~~he or she~~ has knowledge concerning the matter in  
11 question that makes reliance otherwise permitted by subsection  
12 (2) unwarranted.

13 (5) A manager or managing member is not liable for any  
14 action taken as a manager or managing member, or any failure  
15 to take any action, if the manager or managing member ~~he or~~  
16 ~~she~~ performed the duties of the manager's or managing member's  
17 ~~his or her~~ position in compliance with this section.

18 608.4226 Conflicts of interest.--

19 (1) No contract or other transaction between a limited  
20 liability company and one or more of its members, managers, or  
21 managing members or any other limited liability company,  
22 corporation, firm, association, or entity in which one or more  
23 of its members, managers, or managing members are managers,  
24 managing members, directors, or officers or are financially  
25 interested shall be either void or voidable because of such  
26 relationship or interest, because such members, managers, or  
27 managing members are present at the meeting of the managers or  
28 managing members or a committee thereof which authorizes,  
29 approves, or ratifies such contract or transaction, or because  
30 their votes are counted for such purpose, if:

1           (a) The fact of such relationship or interest is  
2 disclosed or known to the managers or managing members or  
3 committee which authorizes, approves, or ratifies the contract  
4 or transaction by a vote or consent sufficient for the purpose  
5 without counting the votes or consents of such interested  
6 members, managers, or managing members;

7           (b) The fact of such relationship or interest is  
8 disclosed or known to the members entitled to vote and they  
9 authorize, approve, or ratify such contract or transaction by  
10 vote or written consent; or

11           (c) The contract or transaction is fair and reasonable  
12 as to the limited liability company at the time it is  
13 authorized by the managers, managing members, a committee, or  
14 the members.

15           (2) For purposes of paragraph (1)(a) only, a conflict  
16 of interest transaction is authorized, approved, or ratified  
17 if it receives the affirmative vote of a majority of the  
18 managers or managing members, or of the committee, who have no  
19 relationship or interest in the transaction described in  
20 subsection (1), but a transaction may not be authorized,  
21 approved, or ratified under this section by a single manager  
22 of a manager-managed company or a single managing member of a  
23 member-managed company, unless the company is a single member  
24 limited liability company. If a majority of the managers or  
25 managing members who have no such relationship or interest in  
26 the transaction vote to authorize, approve, or ratify the  
27 transaction, a quorum is present for the purpose of taking  
28 action under this section. The presence of or a vote cast by a  
29 manager or managing member with such relationship or interest  
30 in the transaction does not affect the validity of any action  
31 taken under paragraph (1)(a) if the transaction is otherwise

1 authorized, approved, or ratified as provided in that  
2 subsection, but such presence or vote of those managers or  
3 managing members may be counted for purposes of determining  
4 whether the transaction is approved under other sections of  
5 this chapter.

6 (3) For purposes of paragraph (1)(b), a conflict of  
7 interest transaction is authorized, approved, or ratified if  
8 it receives the vote of a majority-in-interest of the members  
9 entitled to be counted under this subsection. Membership  
10 interests owned by or voted under the control of a manager or  
11 managing member who has a relationship or interest in the  
12 transaction described in subsection (1) may not be counted in  
13 a vote of members to determine whether to authorize, approve,  
14 or ratify a conflict of interest transaction under paragraph  
15 (1)(b). The vote of those membership interests, however, is  
16 counted in determining whether the transaction is approved  
17 under other sections of this act. A majority-in-interest of  
18 the members, whether or not present, that are entitled to be  
19 counted in a vote on the transaction under this subsection  
20 constitutes a quorum for the purpose of taking action under  
21 this section.

22 (Substantial rewording of section. See  
23 s. 608.436, F.S., for present text.)

24 608.4227 Liability of members and managers.--

25 (1) Except as provided in this chapter, neither the  
26 members of a limited liability company nor the managers of a  
27 limited liability company managed by a manager or managing  
28 member are liable, solely by reason of being a member or  
29 serving as a manager or managing member, under a judgment,  
30 decree, or order of a court, or in any other manner, for a  
31

1 debt, obligation, or liability of the limited liability  
2 company;

3 (2) Any such member or manager or other person acting  
4 under the articles of organization or operating agreement of a  
5 limited liability company shall not be liable to the limited  
6 liability company or to any such other member or manager for  
7 the member's or manager's or other person's good faith  
8 reliance on the provisions of the limited liability company's  
9 articles of organization or operating agreement; and

10 (3) The member's or manager's or other person's duties  
11 and liabilities may be expanded or restricted by provisions in  
12 a limited liability company's articles of organization or  
13 operating agreement.

14 (Substantial rewording of section. See  
15 s. 608.4362, F.S., for present text.)

16 608.4228 Liability of managers and managing members.--

17 (1) A manager or a managing member shall not be  
18 personally liable for monetary damages to the limited  
19 liability company or any other person for any statement, vote,  
20 decision, or failure to act regarding management or policy  
21 decisions by a manager or a managing member, unless:

22 (a) The manager or managing member breached or failed  
23 to perform the duties as a manager or managing member; and

24 (b) The manager's or managing member's breach of or  
25 failure to perform those duties constitutes any of the  
26 following:

27 1. A violation of the criminal law, unless the manager  
28 or managing member had a reasonable cause to believe his or  
29 her conduct was lawful or had no reasonable cause to believe  
30 such conduct was unlawful. A judgment or other final  
31 adjudication against a manager or managing member in any

1 criminal proceeding for a violation of the criminal law estops  
2 that manager or managing member from contesting the fact that  
3 such breach, or failure to perform, constitutes a violation of  
4 the criminal law, but does not estop the manager or managing  
5 member from establishing that he or she had reasonable cause  
6 to believe that his or her conduct was lawful or had no  
7 reasonable cause to believe that such conduct was unlawful.

8 2. A transaction from which the manager or managing  
9 member derived an improper personal benefit, either directly  
10 or indirectly.

11 3. A distribution in violation of s. 608.426.

12 4. In a proceeding by or in the right of the limited  
13 liability company to procure a judgment in its favor or by or  
14 in the right of a member, conscious disregard of the best  
15 interest of the limited liability company, or willful  
16 misconduct.

17 5. In a proceeding by or in the right of someone other  
18 than the limited liability company or a member, recklessness  
19 or an act or omission which was committed in bad faith or with  
20 malicious purpose or in a manner exhibiting wanton and willful  
21 disregard of human rights, safety, or property.

22 (2) For the purposes of this section, the term  
23 "recklessness" means acting, or failing to act, in conscious  
24 disregard of a risk known, or so obvious that it should have  
25 been known, to the manager or managing member and known to the  
26 manager or managing member, to be so great as to make it  
27 highly probable that harm would follow from such action or  
28 failure to act.

29 (3) A manager or managing member is deemed not to have  
30 derived an improper personal benefit from any transaction if  
31 the transaction and the nature of any personal benefit derived

1 by the manager or managing member are not prohibited by state  
2 or federal law or the articles of organization or operating  
3 agreement and, without further limitation, the transaction and  
4 the nature of any personal benefit derived by a manager or  
5 managing member are disclosed or known to the members, and the  
6 transaction was authorized, approved, or ratified by the vote  
7 of a majority-in-interest of the members other than the  
8 managing member, or the transaction was fair and reasonable to  
9 the limited liability company at the time it was authorized by  
10 the manager or managing member, notwithstanding that a manager  
11 or managing member received a personal benefit.

12 (4) The circumstances set forth in subsection (3) are  
13 not exclusive and do not preclude the existence of other  
14 circumstances under which a manager will be deemed not to have  
15 derived an improper benefit.

16 (Substantial rewording of section. See  
17 s. 608.4363, F.S., for present text.)

18 608.4229 Indemnification of managers, managing  
19 members, officers, employees, and agents.--

20 (1) Subject to such standards and restrictions, if  
21 any, as are set forth in its articles of organization or  
22 operating agreement, a limited liability company may, and  
23 shall have the power to, but shall not be required to,  
24 indemnify and hold harmless any member or manager or other  
25 person from and against any and all claims and demands  
26 whatsoever.

27 (2) Notwithstanding subsection (1), indemnification or  
28 advancement of expenses shall not be made to or on behalf of  
29 any manager, managing member, officer, employee, or agent if a  
30 judgment or other final adjudication establishes that the  
31 actions, or omissions to act, of such manager, managing

1 member, officer, employee, or agent were material to the cause  
2 of action so adjudicated and constitute any of the following:

3 (a) A violation of criminal law, unless the manager,  
4 managing member, officer, employee, or agent had no reasonable  
5 cause to believe such conduct was unlawful.

6 (b) A transaction from which the manager, managing  
7 member, officer, employee, or agent derived an improper  
8 personal benefit.

9 (c) In the case of a manager or managing member, a  
10 circumstance under which the liability provisions of s.  
11 608.426 are applicable.

12 (d) Willful misconduct or a conscious disregard for  
13 the best interests of the limited liability company in a  
14 proceeding by or in the right of the limited liability company  
15 to procure a judgment in its favor or in a proceeding by or in  
16 the right of a member.

17 608.423 Limited liability company operating agreement;  
18 nonwaivable provisions ~~regulations~~.--

19 (1) Except as otherwise provided in subsection (2),  
20 all members of a limited liability company may enter into an  
21 operating agreement, which need not be in writing, to regulate  
22 the affairs of the company and the conduct of its business,  
23 establish duties in addition to those set forth in this  
24 chapter, and to govern relations among the members, managers,  
25 and company. Any inconsistency between written and oral  
26 operating agreements shall be resolved in favor of the written  
27 agreement. To the extent the operating agreement does not  
28 otherwise provide, this chapter governs relations among the  
29 members, managers, and company.

30 (2) The operating agreement may not:  
31



1           (a) Unreasonably restrict a right to information or  
2 access to records under s. 608.4101;

3           (b) Eliminate the duty of loyalty under s. 608.4225,  
4 but the agreement may:

5                 1. Identify specific types or categories of activities  
6 that do not violate the duty of loyalty, if not manifestly  
7 unreasonable; and

8                 2. Specify the number or percentage of members or  
9 disinterested managers that may authorize or ratify, after  
10 full disclosure of all material facts, a specific act or  
11 transaction that otherwise would violate the duty of loyalty;

12           (c) Unreasonably reduce the duty of care under s.  
13 608.4225;

14           (d) Eliminate the obligation of good faith and fair  
15 dealing under s. 608.4225, but the operating agreement may  
16 determine the standards by which the performance of the  
17 obligation is to be measured, if the standards are not  
18 manifestly unreasonable;

19           (e) Vary the right to expel a member in an event  
20 specified in this chapter;

21           (f) Vary the requirement to wind up the limited  
22 liability company's business in a case specified in this  
23 chapter; or

24           (g) Restrict rights of a person, other than a manager,  
25 member, or transferee of a member's distributional interest,  
26 under this chapter.

27           (3)(1) The power to adopt, alter, amend, or repeal the  
28 operating agreement regulations of a limited liability company  
29 shall be vested in the members of the company unless vested in  
30 the manager or managers of the company by the articles of  
31 organization or operating agreement, provided that any

1 amendment to a written operating agreement shall be in  
2 writing. The operating agreement ~~Regulations~~ adopted by the  
3 members or by the manager or managers may be repealed or  
4 altered; a new operating agreement ~~regulations~~ may be adopted  
5 by the members; and the members may prescribe in any operating  
6 agreement ~~regulations~~ made by them that such operating  
7 agreement ~~regulations~~ may not be altered, amended, or repealed  
8 by the manager or managers. ~~The regulations may contain any~~  
9 ~~provisions for the regulation and management of the affairs of~~  
10 ~~the limited liability company not inconsistent with law or the~~  
11 ~~articles of organization.~~

12 ~~(4)(2)~~ Unless the articles of organization or the  
13 operating agreement provides ~~regulations provide~~ otherwise, if  
14 the management of the limited liability company is vested in a  
15 manager or managers, the managers may adopt an operating  
16 agreement ~~regulations~~ to be effective only in an emergency as  
17 defined in subsection ~~(7)(5)~~. The emergency operating  
18 agreement ~~regulations~~, which is ~~are~~ subject to amendment or  
19 repeal by the members, may make all provisions necessary for  
20 managing the limited liability company during an emergency,  
21 including procedures for calling a meeting of the managers and  
22 designation of additional or substitute managers.

23 ~~(5)(3)~~ All provisions of the regular operating  
24 agreement ~~regulations~~ consistent with the emergency  
25 regulations remain effective during the emergency. The  
26 emergency operating agreement is ~~regulations are~~ not effective  
27 after the emergency ends.

28 ~~(6)(4)~~ Actions taken by the limited liability company  
29 in good faith in accordance with the emergency operating  
30 agreement ~~regulations~~ have the effect of binding the company  
31

1 and may not be used to impose liability on a manager,  
2 employee, or agent of the company.

3 ~~(7)(5)~~ An emergency exists for purposes of this  
4 section if the limited liability company's managers cannot  
5 readily be assembled because of some catastrophic event.

6 (Substantial rewording of section. See  
7 s. 608.4231, F.S., for present text.)

8 608.4231 Voting by members and managers.--

9 (1) The articles of organization or operating  
10 agreement may provide for classes or groups of members having  
11 such relative rights, powers, and duties as the articles of  
12 organization or operating agreement may provide, and may make  
13 provision for the future creation in the manner provided in  
14 the articles of organization or operating agreement of  
15 additional classes or groups of members having such relative  
16 rights, powers, and duties as may be established, including  
17 rights, powers, and duties senior to existing classes and  
18 groups of members. The articles of organization or operating  
19 agreement may provide for the taking of an action, including  
20 the amendment of the articles of organization or operating  
21 agreement, without the vote or approval of any member or class  
22 or group of members, including an action to create under the  
23 provisions of the articles of organization or operating  
24 agreement a class or group of limited liability company  
25 interests that was not previously outstanding. The articles of  
26 organization or operating agreement may provide that any  
27 member or class or group of members shall have no voting  
28 rights.

29 (2) The articles of organization or operating  
30 agreement may grant to all or certain identified members or a  
31 specified class or group of the members the right to vote

1 separately or with all or any class or group of the members or  
2 manager on any matter. Voting by members may be on a  
3 per-capita, number, financial interest, class, group, or any  
4 other basis.

5 (3) If no voting provision is contained in the  
6 articles of organization or operating agreement:

7 (a) The members of a limited liability company shall  
8 vote in proportion to their then-current percentage or other  
9 interest in the profits of the limited liability company or,  
10 in the case of a member who has assigned the member's entire  
11 economic interest in the limited liability company to a person  
12 who has not been admitted as a member, in proportion to the  
13 then-current percentage or other interest in the profits of  
14 the limited liability company that the assigning member would  
15 have, had the assignment not been made.

16 (b) In all matters in which a vote is required, a vote  
17 of a majority-in-interest of the members shall be sufficient  
18 unless provided otherwise in the company's articles of  
19 organization or operating agreement or this chapter.

20 (4) Notwithstanding any provision to the contrary in  
21 the articles of organization or operating agreement, in no  
22 event shall the articles of organization be amended by a vote  
23 of less than a majority-in-interest of the members.

24 (5) Notwithstanding any provision to the contrary in  
25 the articles of organization or operating agreement, members  
26 shall have the right to vote on a dissolution of the limited  
27 liability company as provided in s. 608.441 and on a merger of  
28 the limited liability company as provided in s. 608.4381.

29 (6) Except as otherwise provided in the articles of  
30 organization or the operating agreement, if the members have  
31 appointed more than one manager to manage the business of the

1 limited liability company, decisions of the managers shall be  
2 made by majority vote of the managers, if at a meeting, or by  
3 unanimous written consent.

4 (7) The articles of organization or operating  
5 agreement which grants a right to vote may set forth  
6 provisions relating to notice of the time, place, or purpose  
7 of any meeting at which any matter is to be voted on by any  
8 members, waiver of any such notice, action by consent without  
9 a meeting, the establishment of a record date, quorum  
10 requirements, voting in person or by proxy, or any other  
11 matter with respect to the exercise of any such right to vote.

12 (8) Unless otherwise provided in the articles of  
13 organization or operating agreement, on any matter that is to  
14 be voted on by members, the members may take such action  
15 without a meeting, without prior notice, and without a vote if  
16 a consent or consents in writing, setting forth the action so  
17 taken, are signed by the members having not less than the  
18 minimum number of votes that would be necessary to authorize  
19 or take such action at a meeting, but in no event by a vote of  
20 less than a majority-in-interest of the members which would be  
21 necessary to authorize or take such action at a meeting.

22 Unless otherwise provided in the articles of organization or  
23 operating agreement, on any matter that is to be voted on by  
24 members or managers, the members or managers may vote in  
25 person or by proxy. Within 10 days after obtaining such  
26 authorization by written consent, notice must be given to  
27 those members who have not consented in writing or who are not  
28 entitled to vote on the action.

29 608.4232 Admission of additional members.--Except as  
30 otherwise provided in the articles of organization or the  
31 operating agreement ~~regulations~~, no person may be admitted as

1 a member unless a majority-in-interest of the members consent  
2 ~~each member consents~~ in writing to the admission of the  
3 additional member.

4 608.4235 Agency of members and managers.--

5 (1) Subject to subsections (2) and (3):

6 (a) In a member-managed company, each member is an  
7 agent of the limited liability company for the purpose of its  
8 business, and an act of a member, including the signing of an  
9 instrument in the company's name, for apparently carrying on  
10 in the ordinary course the company's business or business of  
11 the kind carried on by the company binds the company, unless  
12 the member had no authority to act for the company in the  
13 particular matter and the person with whom the member was  
14 dealing knew or had notice that the member lacked authority.

15 (b) An act of a member which is not apparently for  
16 carrying on in the ordinary course the company's business or  
17 business of the kind carried on by the company binds the  
18 company only if the act was authorized by appropriate vote of  
19 the other members.

20 (2) Subject to subsection (3), in a manager-managed  
21 company:

22 (a) A member is not an agent of the company for the  
23 purpose of its business solely by reason of being a member.  
24 Each manager is an agent of the company for the purpose of its  
25 business, and an act of a manager, including the signing of an  
26 instrument in the company's name, for apparently carrying on  
27 in the ordinary course the company's business or business of  
28 the kind carried on by the company binds the company, unless  
29 the manager had no authority to act for the company in the  
30 particular matter and the person with whom the manager was  
31 dealing knew or had notice that the manager lacked authority.

1           (b) An act of a manager which is not apparently for  
2 carrying on in the ordinary course the company's business or  
3 business of the kind carried on by the company binds the  
4 company only if the act was authorized under s. 608.422.

5           (3) Unless the articles of organization or operating  
6 agreement limit the authority of a member, any member of a  
7 member-managed company or manager of a manager-managed company  
8 may sign and deliver any instrument transferring or affecting  
9 the company's interest in real property. The instrument is  
10 conclusive in favor of a person who gives value without  
11 knowledge of the lack of the authority of the person signing  
12 and delivering the instrument.

13           608.4236 Delegation of rights and powers to  
14 manage.--Unless otherwise provided in the limited liability  
15 company's articles of organization or operating agreement, a  
16 member or manager of a limited liability company has the power  
17 and authority to delegate to one or more other persons the  
18 member's or manager's, as the case may be, rights and powers  
19 to manage and control the business and affairs of the limited  
20 liability company, including the power and authority to  
21 delegate to agents, boards of managers, managing members or  
22 directors, officers and assistant officers, and employees of a  
23 member or manager of the limited liability company and the  
24 power and authority to delegate by a management agreement or  
25 another agreement with, or otherwise, to other persons. Unless  
26 otherwise provided in the limited liability company's articles  
27 of organization or operating agreement, such delegation by a  
28 member or manager of a limited liability company shall not  
29 cause the member or manager to cease to be a member or  
30 manager, as the case may be, of the limited liability company.

31

1           608.4237 Membership termination upon events of  
2 bankruptcy.--A person ceases to be a member of a limited  
3 liability company upon the occurrence of any of the following:  
4           (1) Unless otherwise provided in the articles of  
5 organization or operating agreement, or with the written  
6 consent of all members, a member:  
7           (a) Makes an assignment for the benefit of creditors;  
8           (b) Files a voluntary petition in bankruptcy;  
9           (c) Is adjudged a bankrupt or insolvent, or has  
10 entered against the member an order for relief, in any  
11 bankruptcy or insolvency proceeding;  
12           (d) Files a petition or answer seeking for himself any  
13 reorganization, arrangement, composition, readjustment,  
14 liquidation, dissolution, or similar relief under any statute,  
15 law, or regulation;  
16           (e) Files an answer or other pleading admitting or  
17 failing to contest the material allegations of a petition  
18 filed against the member in any proceeding of this nature; or  
19           (f) Seeks, consents to, or acquiesces in the  
20 appointment of a trustee, receiver, or liquidator of the  
21 member or of all or any substantial part of the member's  
22 properties; or  
23           (2) Unless otherwise provided in the articles of  
24 organization or operating agreement, or with the written  
25 consent of all members, 120 days after the commencement of any  
26 proceeding against the member seeking reorganization,  
27 arrangement, composition, readjustment, liquidation,  
28 dissolution, or similar relief under any statute, law, or  
29 regulation, if the proceeding has not been dismissed, or if  
30 within 90 days after the appointment without the member's  
31 consent or acquiescence of a trustee, receiver, or liquidator



1 of the member or of all or any substantial part of the  
2 member's properties, the appointment is not vacated or stayed,  
3 or within 90 days after the expiration of any such stay, the  
4 appointment is not vacated.

5 (Substantial rewording of section. See

6 s. 608.437, F.S., for present text.)

7 608.4238 Unauthorized assumption of powers.--All  
8 persons purporting to act as or on behalf of a limited  
9 liability company, having actual knowledge that there was no  
10 organization of a company under this chapter, are jointly and  
11 severally liable for all liabilities created while so acting  
12 except for any liability to any person who also had actual  
13 knowledge that there was no organization of a limited  
14 liability company.

15 608.425 Limited liability company property.--

16 (1) All property originally contributed to the limited  
17 liability company or subsequently acquired by a limited  
18 liability company by purchase or otherwise is limited  
19 liability company property.

20 (2) Unless otherwise provided in the articles of  
21 organization or the operating agreement ~~regulations~~, property  
22 acquired with limited liability company funds is limited  
23 liability company property.

24 (3) Instruments and documents providing for the  
25 acquisition, mortgage, or disposition of property of the  
26 limited liability company shall be valid and binding upon the  
27 company, if they are executed in accordance with this chapter  
28 ~~by the persons authorized in the articles of organization or~~  
29 ~~the regulations to execute such documents on behalf of the~~  
30 ~~limited liability company, or, if the articles of organization~~  
31 ~~or the regulations do not provide for the execution of such~~

1 ~~documents, one or more managers of a limited liability company~~  
2 ~~having a manager or managers, or one or more members of a~~  
3 ~~limited liability company in which management has been~~  
4 ~~retained in the members.~~

5           608.426 Distributions ~~Distribution of property;~~  
6 impairment of capital.--

7           (1) The limited liability company may make  
8 ~~distributions, from time to time, distribute its property to~~  
9 its members in accordance with the provisions contained in the  
10 operating agreement regulations, except that no distribution  
11 may be made if after the distribution the limited liability  
12 company would ~~not be insolvent able to pay its debts as they~~  
13 ~~become due in the usual course of business, or the limited~~  
14 ~~liability company's total assets would be less than the sum of~~  
15 ~~its total liabilities (except liabilities to members on~~  
16 ~~account of their contributions, unless otherwise provided in~~  
17 ~~the articles of organization)~~. If the operating agreement does  
18 ~~regulations do~~ not provide for the payment of distributions to  
19 members, the distributions shall be made on the basis of the  
20 agreed value, as stated in the records of the limited  
21 liability company, of the contributions made by each member to  
22 the extent they have been received by the limited liability  
23 company and have not been returned, when made, must be  
24 ~~allocated on the basis of each member's relative capital~~  
25 ~~account.~~

26           (2) The managers or managing members of a limited  
27 liability company may base a determination that a distribution  
28 is not prohibited under subsection (1) either on financial  
29 statements prepared on the basis of accounting practices and  
30 principles that are reasonable in the circumstances or on a  
31 fair valuation or other method that is reasonable in the

1 | circumstances. In the case of any distribution based upon such  
2 | financial statement or such a valuation, each such  
3 | distribution shall be identified as a distribution based upon  
4 | such financial statements or a fair ~~current~~ valuation of  
5 | assets, and the amount distributed shall be disclosed to the  
6 | receiving members concurrent with their receipt of the  
7 | distribution.

8 |         (3) A manager or managing member who votes for or  
9 | assents to a distribution made in violation of this section,  
10 | the articles of incorporation, or the operating agreement  
11 | ~~regulations~~, is personally liable to the limited liability  
12 | company for the amount of the distribution that exceeds what  
13 | could have been distributed without such violation if it is  
14 | established that the manager or managing member ~~he or she~~ did  
15 | not perform the manager's or managing member's ~~his or her~~  
16 | duties in compliance with s. 608.4225. In any proceeding  
17 | commenced under this section, a manager or managing member has  
18 | all of the defenses ordinarily available to a manager or  
19 | managing member.

20 |         (4) A manager or managing member held liable under  
21 | subsection (3) for an unlawful distribution is entitled to  
22 | contribution:

23 |             (a) From every other manager or managing member who is  
24 | also ~~could be~~ liable under subsection (3) for the unlawful  
25 | distribution; and

26 |             (b) From each member to the extent of ~~for~~ the amount  
27 | the member accepted knowing the distribution was made in  
28 | violation of this section, the articles of incorporation, or  
29 | the operating agreement ~~regulations~~.

30 |         (5) A proceeding under this section is barred unless  
31 | it is commenced within 2 years after the date on which the

1 distribution was made. In the case of a distribution in the  
2 form of indebtedness, each payment of principal or interest is  
3 treated as a distribution.

4           608.4261 Sharing of profits and losses.--The profits  
5 and losses of the limited liability company shall be allocated  
6 among the members in the manner provided in the articles of  
7 organization or the operating agreement regulations. If the  
8 articles of organization do not or the operating agreement  
9 does regulations do not provide for the allocation of profits  
10 and losses among members, profits and losses shall be  
11 allocated on the basis of the agreed value, as stated in the  
12 records of the limited liability company, of the contributions  
13 made by each member to the extent such contributions have been  
14 received by the limited liability company and have not been  
15 returned each member's relative capital account.

16           608.427 Withdrawal of member and distribution upon  
17 withdrawal or reduction of members' contributions to  
18 capital.--

19           (1) A member may withdraw from a limited liability  
20 company only at the time or upon the occurrence of an event  
21 specified in the articles of organization or operating  
22 agreement and in accordance with the articles of organization  
23 or operating agreement. Notwithstanding anything to the  
24 contrary under applicable law, unless the articles of  
25 organization or operating agreement provides otherwise, a  
26 member may not resign from a limited liability company prior  
27 to the dissolution and winding up of the limited liability  
28 company. Notwithstanding anything to the contrary under  
29 applicable law, the articles of organization or operating  
30 agreement may provide that a limited liability company  
31 interest may not be assigned prior to the dissolution and

1 winding up of the limited liability company. ~~A member may~~  
2 ~~withdraw from a limited liability company at the time or upon~~  
3 ~~the happening of an event specified in the articles of~~  
4 ~~organization or the regulations. If the articles of~~  
5 ~~organization and regulations do not specify the time or the~~  
6 ~~events upon the happening of which a member may withdraw or a~~  
7 ~~definite time for the dissolution and the winding up of the~~  
8 ~~limited liability company, a member may withdraw upon not less~~  
9 ~~than 6 months' prior written notice to each nonwithdrawing~~  
10 ~~member at his or her address as set forth in the records that~~  
11 ~~are required to be kept under s. 608.4101.~~

12 (2) ~~Except as provided in subsection (3),~~ Upon  
13 withdrawal, a withdrawing member is entitled to receive any  
14 distribution to which the withdrawing member ~~he or she~~ is  
15 entitled under the articles of organization or operating  
16 agreement regulations, and, if not otherwise provided in the  
17 articles of organization and operating agreement regulations,  
18 the withdrawing member ~~he or she~~ is entitled to receive,  
19 within a reasonable time after withdrawal, the fair value of  
20 the withdrawing member's interest in the limited liability  
21 company as of the date of resignation based upon the  
22 withdrawing member's right to share in distributions from the  
23 limited liability company ~~balance of his or her capital~~  
24 ~~account.~~

25 (3) ~~A member may not receive a distribution from a~~  
26 ~~limited liability company to the extent that, after giving~~  
27 ~~effect to the distribution, all liabilities of the limited~~  
28 ~~liability company, other than liabilities to members on~~  
29 ~~account of their ownership interests in the limited liability~~  
30 ~~company, exceed the value of the limited liability company's~~  
31 ~~assets.~~

1           ~~(3)(4)~~ In the absence of a statement in the articles  
2 of organization or the operating agreement regulations to the  
3 contrary or the consent of all members of the limited  
4 liability company, a member, irrespective of the nature of the  
5 member's ~~his or her or its~~ contribution, has only the right to  
6 demand and receive cash in return for the member's ~~his or her~~  
7 ~~or its~~ contribution to capital.

8           608.428 Liability upon wrongful distribution ~~return of~~  
9 ~~contribution.--~~

10           ~~(1)(a) If a member receives the return of any part of~~  
11 ~~his or her contribution without violation of the articles of~~  
12 ~~organization, the regulations, or this chapter, he or she is~~  
13 ~~liable to the limited liability company for a period of 1 year~~  
14 ~~thereafter for the amount of the returned contribution, but~~  
15 ~~only to the extent necessary to discharge the limited~~  
16 ~~liability company's liabilities to creditors who extended~~  
17 ~~credit to the limited liability company during the period the~~  
18 ~~contribution was held by the limited liability company.~~

19           ~~(1)(b)~~ If a member receives a distribution ~~the return~~  
20 ~~of any part of his or her contribution~~ in violation of the  
21 articles of organization, the operating agreement regulations,  
22 or this chapter, the member ~~he or she~~ is liable to the limited  
23 liability company for a period of 3 6 years thereafter for the  
24 amount of the distribution ~~contribution~~ wrongfully made  
25 returned.

26           (2) A member may not receive a distribution from a  
27 liability company to the extent that, after giving effect to  
28 the distribution, all liabilities of the limited liability  
29 company, other than liabilities to members on account of their  
30 membership interests in the limited liability company, exceed  
31 the value of the limited liability company's assets. ~~A member~~

1 ~~receives a return of his or her contribution to the extent~~  
2 ~~that a distribution to the member reduces his or her share of~~  
3 ~~the fair value of the net assets of the limited liability~~  
4 ~~company below the value, as set forth in the records that the~~  
5 ~~limited liability company is required to keep pursuant to s.~~  
6 ~~608.4101, of the member's contribution which has not been~~  
7 ~~distributed to him or her.~~

8 (Substantial rewording of section. See  
9 s. 608.432, F.S., for present text.)

10 608.432 Assignment of member's interest.--

11 (1) A limited liability company interest is assignable  
12 in whole or in part except as provided in the articles of  
13 organization or operating agreement. The assignee of a  
14 member's interest shall have no right to participate in the  
15 management of the business and affairs of a limited liability  
16 company except as provided in the articles of organization or  
17 operating agreement and upon:

18 (a) The approval of all of the members of the limited  
19 liability company other than the member assigning the limited  
20 liability company interest; or

21 (b) Compliance with any procedure provided for in the  
22 limited liability company agreement.

23 (2) Unless otherwise provided in the articles of  
24 organization or operating agreement:

25 (a) An assignment of a membership interest does not  
26 entitle the assignee to become or to exercise any rights or  
27 powers of a member;

28 (b) An assignment of a membership interest entitles  
29 the assignee to share in such profits and losses, to receive  
30 such distribution or distributions, and to receive such  
31 allocation of income, gain, loss, deduction, or credit or

1 similar item to which the assignor was entitled, to the extent  
2 assigned; and

3 (c) A member ceases to be a member and to have the  
4 power to exercise any rights or powers of a member upon  
5 assignment of all of the membership interest of such member.  
6 Unless otherwise provided in the articles of organization or  
7 operating agreement, the pledge of, or granting of a security  
8 interest, lien, or other encumbrance in or against, any or all  
9 of the membership interest of a member shall not cause the  
10 member to cease to be a member or to have the power to  
11 exercise any rights or powers of a member.

12 (3) The articles of organization or operating  
13 agreement may provide that a member's interest in a limited  
14 liability company may be evidenced by a certificate of  
15 membership interest issued by the limited liability company.

16 (4) Unless otherwise provided in the articles of  
17 organization or operating agreement and except to the extent  
18 assumed by agreement, until an assignee of a membership  
19 interest becomes a member, the assignee shall have no  
20 liability as a member solely as a result of the assignment.

21 (5) Unless otherwise provided in the articles of  
22 organization or operating agreement, a limited liability  
23 company may acquire, by purchase, redemption, or otherwise,  
24 any membership interest or other interest of a member or  
25 manager in the limited liability company. Unless otherwise  
26 provided in the articles of organization or operating  
27 agreement, any such interest so acquired by the limited  
28 liability company shall be deemed canceled.

29 608.433 Right of assignee to become member.--

30 (1) Unless otherwise provided in the articles of  
31 organization or operating agreement, an assignee of a limited



1 liability company interest may become a member only if all  
2 ~~other~~ members other than the member assigning the interest  
3 consent.

4 (2) An assignee who has become a member has, to the  
5 extent assigned, the rights and powers, and is subject to the  
6 restrictions and liabilities, of the assigning ~~a~~ member under  
7 the articles of organization, the operating agreement  
8 ~~regulations~~, and this chapter. An assignee who becomes a  
9 member also is liable for the obligations of the assignee's  
10 ~~his or her~~ assignor to make and return contributions as  
11 provided in s.ss.608.4211 and wrongful distributions as  
12 provided in s.608.428. However, the assignee is not  
13 obligated for liabilities which are unknown to the assignee at  
14 the time the assignee ~~he or she~~ became a member and which  
15 could not be ascertained from the articles of organization or  
16 the operating agreement regulations.

17 (3) If an assignee of a limited liability company  
18 interest becomes a member, the assignor is not released from  
19 ~~his or her~~ liability to the limited liability company under  
20 ss. 608.4211, 608.426, and 608.4228 ~~608.4362~~.

21 (4) On application to a court of competent  
22 jurisdiction by any judgment creditor of a member, the court  
23 may charge the limited liability company membership interest  
24 of the member with payment of the unsatisfied amount of the  
25 judgment with interest. To the extent so charged, the judgment  
26 creditor has only the rights of an assignee of such ~~the~~  
27 ~~limited liability company~~ interest. This chapter does not  
28 deprive any member of the benefit of any exemption laws  
29 applicable to the member's ~~his or her limited liability~~  
30 ~~company~~ interest.

31

1           608.434 Power of estate of deceased or incompetent  
2 member; dissolved or terminated member.--

3           (1) If a member who is an individual dies or if a  
4 court of competent jurisdiction adjudges a member who is an  
5 individual to be incompetent to manage the member's ~~his or her~~  
6 person or property, the member's executor, administrator,  
7 guardian, conservator, or other legal representative may  
8 exercise all the member's rights for the purpose of settling  
9 the member's ~~his or her~~ estate or administering the member's  
10 ~~his or her~~ property, including any power the member had to  
11 give an assignee the right to become a member.

12           (2) If a member is a corporation, limited liability  
13 company, trust, or other entity and is dissolved or  
14 terminated, the powers of that member may be exercised by its  
15 legal representative or successor.

16           608.438 Merger of limited liability company.--

17           (1) As used in this section and ss. 608.4381-608.4384,  
18 the term "other business entity" includes a corporation, a  
19 business trust or association, a real estate investment trust,  
20 a common law trust, an unincorporated business, a general  
21 partnership, a limited partnership, a limited liability  
22 company other than a limited liability company organized under  
23 the laws of this chapter, or any other entity that is formed  
24 pursuant to the requirements of applicable law.

25           (2) Unless otherwise provided in the articles of  
26 organization or the operating agreement ~~regulations~~ of a  
27 limited liability company, pursuant to a plan of merger, a  
28 limited liability company may merge with or into one or more  
29 limited liability companies or other business entities formed,  
30 organized, or incorporated under the laws of this state or any  
31

1 other state, the United States, foreign country, or other  
2 foreign jurisdiction, if:

3 (a) Each limited liability company that is a party to  
4 the merger complies with the applicable provisions of this  
5 chapter and complies with the terms of its articles of  
6 organization and operating agreement regulations.

7 (b) Each domestic partnership that is a party to the  
8 merger complies with the applicable provisions of chapter 620.

9 (c) Each domestic corporation that is a party to the  
10 merger complies with the applicable provisions of chapter 607.

11 (d) The merger is permitted by the laws of the state,  
12 country, or jurisdiction under which each other business  
13 entity that is a party to the merger is formed, organized, or  
14 incorporated, and each such other business entity complies  
15 with such laws in effecting the merger.

16 (3) The plan of merger shall set forth:

17 (a) The name of each limited liability company and the  
18 name and jurisdiction of formation, organization, or  
19 incorporation of each other business entity planning to merge,  
20 and the name of the surviving or resulting limited liability  
21 company or other business entity into which each other limited  
22 liability company or other business entity plans to merge,  
23 which is, in this section and in ss. 608.4381-608.4384,  
24 designated as the surviving entity.

25 (b) The terms and conditions of the merger.

26 (c) The manner and basis of converting the interests  
27 of the members of each limited liability company that is a  
28 party to the merger and the interests, partnership interests,  
29 shares, obligations, or other securities of each other  
30 business entity that is a party to the merger into interests,  
31 partnership interests, shares, obligations, or other

1 securities of the surviving entity or any other limited  
2 liability company or other business entity or, in whole or in  
3 part, into cash or other property, and the manner and basis of  
4 converting rights to acquire interests of each limited  
5 liability company that is a party to the merger and rights to  
6 acquire interests, partnership interests, shares, obligations,  
7 or other securities of each other business entity that is a  
8 party to the merger into rights to acquire interests,  
9 partnership interests, shares, obligations, or other  
10 securities of the surviving entity or any other limited  
11 liability company or other business entity or, in whole or in  
12 part, into cash or other property.

13 (d) If a partnership is to be the surviving entity,  
14 the names and business addresses of the general partners of  
15 the surviving entity.

16 (e) If a limited liability company is to be the  
17 surviving entity, and management thereof is vested in one or  
18 more managers, the names and business addresses of such  
19 managers.

20 (f) All statements required to be set forth in the  
21 plan of merger by the laws under which each other business  
22 entity that is a party to the merger is formed, organized, or  
23 incorporated.

24 (4) The plan of merger may set forth:

25 (a) If a limited liability company is to be the  
26 surviving entity, any amendments to, or a restatement of, the  
27 articles of organization or the operating agreement  
28 ~~regulations~~ of the surviving entity, and such amendments or  
29 restatement shall be effective at the effective date of the  
30 merger.

31

1 (b) The effective date of the merger, which may be on  
2 or after the date of filing the certificate of merger.

3 (c) A provision authorizing one or more of the limited  
4 liability companies that are parties to the merger to abandon  
5 the proposed merger pursuant to s. 608.4381(7).

6 (d) A statement of, or a statement of the method of  
7 determining, the "fair value," as defined in s.  
8 608.4384(1)(b), of an interest in any limited liability  
9 company that is a party to the merger.

10 (e) Other provisions relating to the merger.

11 608.4381 Action on plan of merger.--

12 (1) Unless the articles of organization or the  
13 operating agreement ~~regulations~~ of a limited liability company  
14 require a greater than majority vote, the plan of merger shall  
15 be approved in writing by a majority of the managers who are  
16 members of a limited liability company that is a party to the  
17 merger in which management is not reserved to its members. If  
18 no manager is a member, the plan of merger shall be approved  
19 by vote of the members as set forth in this section. Unless  
20 the articles of organization or the operating agreement  
21 ~~regulations~~ of a limited liability company require a greater  
22 than majority vote or provide for another method of  
23 determining the voting rights of each of its members, and  
24 whether or not management is reserved to its members, the plan  
25 of merger shall be approved in writing by a  
26 majority-in-interest majority of the members of a limited  
27 liability company that is a party to the merger, and, if  
28 applicable, the vote of each member shall be weighted in  
29 accordance with s. 608.4231~~(1)(b)~~; provided, unless the  
30 articles of organization or the operating agreement  
31 ~~regulations~~ of the limited liability company require a greater

1 than majority vote or provide for another method of  
2 determining the voting rights of each of its members, if there  
3 is more than one class or group of members, the merger shall  
4 be approved by a majority-in-interest ~~majority~~ of the members  
5 of each such class or group, and, if applicable, the vote of  
6 each member shall be weighted in accordance with s.  
7 608.4231~~(1)(b)~~.

8 (2) In addition to the approval required by subsection  
9 (1), if the surviving entity is a partnership, no member of a  
10 limited liability company that is a party to the merger shall,  
11 as a result of the merger, become a general partner of the  
12 surviving entity unless such member specifically consents in  
13 writing to becoming a general partner of the surviving entity  
14 and unless such written consent is obtained from each such  
15 member who, as a result of the merger, would become a general  
16 partner of the surviving entity, such merger shall not become  
17 effective under s. 608.4383. Any member providing such  
18 consent in writing shall be deemed to have voted in favor of  
19 the plan of merger for purposes of s. 608.4384.

20 (3) All members of each limited liability company that  
21 is a party to the merger shall be given written notice of any  
22 meeting or other action with respect to the approval of a plan  
23 of merger as provided in subsection (4), not fewer than 30 or  
24 more than 60 days before the date of the meeting at which the  
25 plan of merger shall be submitted for approval by the members  
26 of such limited liability company; provided, if the plan of  
27 merger is submitted to the members of the limited liability  
28 company for their written approval or other action without a  
29 meeting, such notification shall be given to each member not  
30 fewer than 30 or more than 60 days before the effective date  
31 of the merger. Pursuant to s. 608.455, the notification

1 required by this subsection may be waived in writing by the  
2 person or persons entitled to such notification.

3 (4) The notification required by subsection (3) shall  
4 be in writing and shall include:

5 (a) The date, time, and place of the meeting, if any,  
6 at which the plan of merger is to be submitted for approval by  
7 the members of the limited liability company, or, if the plan  
8 of merger is to be submitted for written approval or by other  
9 action without a meeting, a statement to that effect.

10 (b) A copy or summary of the plan of merger.

11 (c) A clear and concise statement that, if the plan of  
12 merger is effected, members dissenting therefrom may be  
13 entitled, if they comply with the provisions of s. 608.4384  
14 regarding the rights of dissenting members, to be paid the  
15 fair value of their interests, which shall be accompanied by a  
16 copy of s. 608.4384.

17 (d) A statement of, or a statement of the method of  
18 determining, the "fair value," as defined in s.  
19 608.4384(1)(b), of an interest in the limited liability  
20 company, in the case of a limited liability company in which  
21 management is not reserved to its members, as determined by  
22 the managers of such limited liability company, which  
23 statement may consist of a reference to the applicable  
24 provisions of such limited liability company's articles of  
25 organization or operating agreement ~~regulations~~ that determine  
26 the fair value of an interest in the limited liability company  
27 for such purposes, and which shall constitute an offer by the  
28 limited liability company to purchase at such fair value any  
29 interests of a "dissenter," as defined in s. 608.4384(1)(a),  
30 unless and until such dissenter's right to receive the fair  
31

1 value of the dissenter's ~~his~~ interests in the limited  
2 liability company is terminated pursuant to s. 608.4384(8).

3 (e) The date on which such notification was mailed or  
4 delivered to the members.

5 (f) Any other information concerning the plan of  
6 merger.

7 (5) The notification required by subsection (3) shall  
8 be deemed to be given at the earliest date of:

9 (a) The date such notification is received;

10 (b) Five days after the date such notification is  
11 deposited in the United States mail addressed to the member at  
12 the member's ~~his~~ address as it appears in the books and  
13 records of the limited liability company, with postage thereon  
14 prepaid;

15 (c) The date shown on the return receipt, if sent by  
16 registered or certified mail, return receipt requested, and  
17 the receipt is signed by or on behalf of the addressee; or

18 (d) The date such notification is given in accordance  
19 with the provisions of the articles of organization or the  
20 operating agreement ~~regulations~~ of the limited liability  
21 company.

22 (6) A plan of merger may provide for the manner, if  
23 any, in which the plan of merger may be amended at any time  
24 before the effective date of the merger, except after the  
25 approval of the plan of merger by the members of a limited  
26 liability company that is a party to the merger, the plan of  
27 merger may not be amended to:

28 (a) Change the amount or kind of interests,  
29 partnership interests, shares, obligations, other securities,  
30 cash, rights, or any other property to be received by the  
31



1 members of such limited liability company in exchange for or  
2 on conversion of their interests;

3 (b) If the surviving entity is a limited liability  
4 company, change any term of the articles of organization or  
5 the operating agreement ~~regulations~~ of the surviving entity,  
6 except for changes that otherwise could be adopted without the  
7 approval of the members of the surviving entity;

8 (c) If the surviving entity is not a limited liability  
9 company, change any term of the articles of incorporation or  
10 comparable governing document of the surviving entity, except  
11 for changes that otherwise could be adopted by the board of  
12 directors or comparable representatives of the surviving  
13 entity; or

14 (d) Change any of the terms and conditions of the plan  
15 of merger if any such change, alone or in the aggregate, would  
16 materially and adversely affect the members, or any class or  
17 group of members, of such limited liability company.

18  
19 If an amendment to a plan of merger is made in accordance the  
20 plan and articles of merger have been filed with the  
21 Department of State, amended articles of merger executed by  
22 each limited liability company and other business entity that  
23 is a party to the merger shall be filed with the Department of  
24 State prior to the effective date of the merger.

25 (7) Unless the limited liability company's articles of  
26 organization or operating agreement ~~regulations~~ or the plan of  
27 merger provide otherwise, notwithstanding the prior approval  
28 of the plan of merger by any limited liability company that is  
29 a party to the merger in which management is not reserved to  
30 its members, and at any time prior to the filing of articles  
31 of merger with the Department of State, the planned merger may

1 be abandoned, subject to any contractual rights, by any such  
2 limited liability company by the affirmative vote of a  
3 majority of its managers without further action by its  
4 members, in accordance with the procedure set forth in the  
5 plan of merger or, if none is set forth, in the manner  
6 determined by the managers of such limited liability company.

7           608.4383 Effect of merger.--When a merger becomes  
8 effective:

9           (1) Every limited liability company and other business  
10 entity that is a party to the merger merges into the surviving  
11 entity and the separate existence of every limited liability  
12 company and other business entity that is a party to the  
13 merger, except the surviving entity, ceases.

14           (2) The title to all property other than real property  
15 or any interest therein, owned by each domestic corporation  
16 and other business entity that is a party to the merger is  
17 vested in the surviving entity without reversion or  
18 impairment. Title to real property or any interest therein  
19 shall be conveyed by the recordation of a deed with payment of  
20 applicable taxes thereon.

21           (3) The surviving entity shall thereafter be  
22 responsible and liable for all the liabilities and obligations  
23 of each limited liability company and other business entity  
24 that is a party to the merger, including liabilities arising  
25 out of the rights of dissenters with respect to such merger  
26 under applicable law.

27           (4) Any claim existing or action or proceeding pending  
28 by or against any limited liability company or other business  
29 entity that is a party to the merger may be continued as if  
30 the merger did not occur or the surviving entity may be  
31

1 substituted in the proceeding for the limited liability  
2 company or other business entity which ceased existence.

3 (5) Neither the rights of creditors nor any liens upon  
4 the property of any limited liability company or other  
5 business entity shall be impaired by such merger.

6 (6) If a limited liability company is the surviving  
7 entity, the articles of organization and the operating  
8 agreement ~~regulations~~ of such limited liability company in  
9 effect immediately prior to the time the merger becomes  
10 effective shall be the articles of organization and the  
11 operating agreement ~~regulations~~ of the surviving entity,  
12 except as amended or restated to the extent provided in the  
13 plan of merger.

14 (7) The interests, partnership interests, shares,  
15 obligations, or other securities, and the rights to acquire  
16 interests, partnership interests, shares, obligations, or  
17 other securities, of each limited liability company and other  
18 business entity that is a party to the merger shall be  
19 converted into interests, partnership interests, shares,  
20 obligations, or other securities, or rights to such  
21 securities, of the surviving entity or any other limited  
22 liability company or other business entity or, in whole or in  
23 part, into cash or other property as provided in the plan of  
24 merger, and the former holders of interests, partnership  
25 interests, shares, obligations, or other securities, or rights  
26 to such securities, shall be entitled only to the rights  
27 provided in the plan of merger and to their rights as  
28 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,  
29 s. 620.205, or other applicable law.

30 608.4384 Rights of dissenting members.--

31 (1) For purposes of this section, the term:

1           (a) "Dissenter" means a member of a limited liability  
2 company who is a recordholder of the interests to which the  
3 dissenter ~~he~~ seeks relief as of the date fixed for the  
4 determination of members entitled to notice of a plan of  
5 merger, who does not vote such interests in favor of the plan  
6 of merger, and who exercises the right to dissent from the  
7 plan of merger when and in the manner required by this  
8 section.

9           (b) "Fair value," with respect to a dissenter's  
10 interests, means the value of the interests in the limited  
11 liability company that is a party to a plan of merger as of  
12 the close of business of the day prior to the effective date  
13 of the merger to which the dissenter objects, excluding any  
14 appreciation or depreciation in anticipation of the merger,  
15 unless such exclusion would be inequitable.

16           (2) Each member of a limited liability company that is  
17 a party to a merger shall have the right to be paid the fair  
18 value of such member's ~~his~~ interests as a dissenter only as  
19 provided in this section.

20           (3) Not later than 20 days after the date on which the  
21 notification required by s. 608.4381(3) is given to the  
22 members, or if such notification is waived in writing by the  
23 dissenter, not later than 20 days after the date of such  
24 written waiver, the dissenter shall deliver to the limited  
25 liability company a written demand for payment to the  
26 dissenter ~~him~~ of the fair value of the interests as to which  
27 the dissenter ~~he~~ seeks relief that states the dissenter's ~~his~~  
28 address, the number and class, if any, of those interests,  
29 and, at the election of the dissenter, the amount claimed by  
30 the dissenter ~~him~~ as the fair value of the interests. The  
31 statement of fair market value by the dissenter, if any, shall

1 constitute an offer by the dissenter to sell the interests to  
2 the limited liability company at such amount. A dissenter may  
3 dissent as to less than all the interests registered in the  
4 dissenter's ~~his~~ name. In such event, the dissenter's rights  
5 shall be determined as if the interests as to which the  
6 dissenter ~~he~~ has dissented and the dissenter's ~~his~~ remaining  
7 interests were registered in the names of different members.  
8 If the interests as to which a dissenter seeks relief are  
9 represented by certificates, the dissenter shall deposit such  
10 certificates with the limited liability company simultaneously  
11 with the delivery of the written demand for payment. Upon  
12 receiving a demand for payment from a dissenter who is a  
13 recordholder of uncertificated interests, the limited  
14 liability company shall make an appropriate notation of the  
15 demand for payment in its records. The limited liability  
16 company may restrict the transfer of uncertificated interests  
17 from the date the dissenter's written demand for payment is  
18 delivered. A written demand for payment served on the limited  
19 liability company in which the dissenter is a member shall  
20 constitute service on the surviving entity.

21 (4) The written demand for payment required by  
22 subsection (3) shall be deemed to be delivered to the limited  
23 liability company at the earliest of:

24 (a) The date such written demand is received;

25 (b) Five days after the date such written demand is  
26 deposited in the United States mail addressed to the principal  
27 business office of the limited liability company, with postage  
28 thereon prepaid;

29 (c) The date shown on the return receipt, if such  
30 written demand is sent by registered or certified mail, return  
31

1 receipt requested, and the receipt is signed by or on behalf  
2 of the addressee; or

3 (d) The date such written demand is given in  
4 accordance with the provisions of the limited liability  
5 company's articles of organization or operating agreement  
6 regulations.

7 (5) Unless the articles of organization or operating  
8 agreement ~~regulations~~ of the limited liability company in  
9 which the dissenter is a member provides ~~provide~~ a basis or  
10 method for determining and paying the fair value of the  
11 interests as to which the dissenter seeks relief, or unless  
12 the limited liability company or the surviving entity and the  
13 dissenter have agreed in writing as to the fair value of the  
14 interests as to which the dissenter seeks relief, the  
15 dissenter, the limited liability company, or the surviving  
16 entity, within 90 days after the dissenter delivers the  
17 written demand for payment to the limited liability company,  
18 may file an action in any court of competent jurisdiction in  
19 the county in this state where the registered office of the  
20 limited liability company is located or was located when the  
21 plan of merger was approved by its members, or in the county  
22 in this state in which the principal office of the limited  
23 liability company that issued the interests is located or was  
24 located when the plan of merger was approved by its members  
25 ~~partners~~, requesting that the fair value of the dissenter's  
26 interests be determined. The court shall also determine  
27 whether each dissenter that is a party to such proceeding, as  
28 to whom the limited liability company or the surviving entity  
29 requests the court to make such determination, is entitled to  
30 receive payment of the fair value for the dissenter's ~~his~~  
31 interests. Other dissenters, within the 90-day period after a

1 | dissenter delivers a written demand to the limited liability  
2 | company, may join such proceeding as plaintiffs or may be  
3 | joined in any such proceeding as defendants, and any two or  
4 | more such proceedings may be consolidated. If the limited  
5 | liability company or surviving entity commences such a  
6 | proceeding, all dissenters, whether or not residents of this  
7 | state, other than dissenters who have agreed in writing with  
8 | the limited liability company or the surviving entity as to  
9 | the fair value of the interests as to which such dissenters  
10 | seek relief, shall be made parties to such action as an action  
11 | against their interests. The limited liability company or the  
12 | surviving entity shall serve a copy of the initial pleading in  
13 | such proceeding upon each dissenter who is a party to such  
14 | proceeding and who is a resident of this state in the manner  
15 | provided by law for the service of a summons and complaint and  
16 | upon each such dissenter who is not a resident of this state  
17 | either by registered or certified mail and publication or in  
18 | such matter as is permitted by law. The jurisdiction of the  
19 | court in such a proceeding shall be plenary and exclusive. All  
20 | dissenters who are proper parties to the proceeding are  
21 | entitled to judgment against the limited liability company or  
22 | the surviving entity for the amount of the fair value of their  
23 | interests as to which payment is sought hereunder. The court  
24 | may, if it so elects, appoint one or more persons as  
25 | appraisers to receive evidence and recommend a decision on the  
26 | question of fair value. The appraisers shall have such power  
27 | and authority as is specified in the order of their  
28 | appointment or an amendment thereof. The limited liability  
29 | company shall pay each dissenter the amount found to be due  
30 | the dissenter ~~him~~ within 10 days after final determination of  
31 | the proceedings. Upon payment of the judgment, the dissenter

1 shall cease to have any interest in the interests as to which  
2 payment is sought hereunder.

3 (6) The judgment may, at the discretion of the court,  
4 include a fair rate of interest, to be determined by the  
5 court.

6 (7) The costs and expenses of any such proceeding  
7 shall be determined by the court and shall be assessed against  
8 the limited liability company or the surviving entity, but all  
9 or any part of such costs and expenses may be apportioned and  
10 assessed as the court deems equitable against any or all of  
11 the dissenters who are parties to the proceeding, to whom the  
12 limited liability company or the surviving entity has made an  
13 offer to pay for the interests, if the court finds that the  
14 action of such dissenters in failing to accept such offer was  
15 arbitrary, vexatious, or not in good faith. Such expenses  
16 shall include reasonable compensation for, and reasonable  
17 expenses of, the appraisers, but shall exclude the fees and  
18 expenses of counsel for, and experts employed by, any party.  
19 If the fair value of the interests, as determined, materially  
20 exceeds the amount which the limited liability company or the  
21 surviving entity offered to pay therefor, the court in its  
22 discretion may award to any dissenter who is a party to the  
23 proceeding such amount as the court determines to be  
24 reasonable compensation to any attorney or expert employed by  
25 the dissenter in the proceeding.

26 (8) The right of a dissenter to receive fair value for  
27 and the obligation to sell such interests as to which the  
28 dissenter ~~he~~ seeks relief, and the right of the limited  
29 liability company or the surviving entity to purchase such  
30 interests and the obligation to pay the fair value of such  
31 interests, shall terminate if:



1 (a) The dissenter has not complied with this section,  
2 unless the limited liability company or the surviving entity  
3 waives, in writing, such noncompliance;

4 (b) The limited liability company abandons the merger  
5 or is finally enjoined or prevented from carrying it out, or  
6 the members rescind their adoption or approval of the merger;

7 (c) The dissenter withdraws the dissenter's ~~his~~  
8 demand, with the consent of the limited liability company or  
9 the surviving entity; or

10 (d)1. The articles of organization or the operating  
11 agreement ~~regulations~~ of the limited liability company in  
12 which the dissenter was a member does not provide a basis or  
13 method for determining and paying the dissenter the fair value  
14 of the dissenter's ~~his~~ interests.

15 2. The limited liability company or the surviving  
16 entity and the dissenter have not agreed upon the fair value  
17 of the dissenter's interests.

18 3. Neither the dissenter, the limited liability  
19 company, nor the surviving entity has filed or is joined in a  
20 complaint under subsection (5) within the 90-day period  
21 provided in subsection (5).

22 (9) Unless otherwise provided in the articles of  
23 organization or the operating agreement ~~regulations~~ of the  
24 limited liability company in which the dissenter was a member,  
25 after the date the dissenter delivers the written demand for  
26 payment in accordance with subsection (3) until either the  
27 termination of the rights and obligations arising under  
28 subsection (3) or the purchase of the dissenter's interests by  
29 the limited liability company or the surviving entity, the  
30 dissenter shall be entitled only to payment as provided in  
31 this section and shall not be entitled to any other rights

1 accruing from such interests, including voting or distribution  
2 rights. If the right to receive fair value is terminated  
3 other than by the purchase of the dissenter's interests by the  
4 limited liability company or the surviving entity, all rights  
5 of the dissenter as a member of the limited liability company  
6 shall be reinstated effective as of the date the dissenter  
7 delivered the written demand for payment, including the right  
8 to receive any intervening payment or other distribution with  
9 respect to the dissenter's interests in the limited liability  
10 company, or, if any such rights have expired or any such  
11 distribution other than a cash payment has been completed, in  
12 lieu thereof at the election of the surviving entity, the fair  
13 value thereof in cash as determined by the surviving entity as  
14 of the time of such expiration or completion, but without  
15 prejudice otherwise to any action or proceeding of the limited  
16 liability company that may have been taken by the limited  
17 liability company on or after the date the dissenter delivered  
18 the written demand for payment.

19 (10) A member who is entitled under this section to  
20 demand payment for the member's ~~his~~ interests shall not have  
21 any right at law or in equity to challenge the validity of any  
22 merger that creates the member's ~~his~~ entitlement to demand  
23 payment hereunder, or to have the merger set aside or  
24 rescinded, except with respect to compliance with the  
25 provisions of the limited liability company's articles of  
26 organization or operating agreement ~~regulations~~ or if the  
27 merger is unlawful or fraudulent with respect to such member.

28 (11) Unless otherwise provided in the articles of  
29 organization or the operating agreement ~~regulations~~ of the  
30 limited liability company in which the dissenter was a member,  
31 this section does not apply with respect to a plan of merger

1 if, as of the date fixed for the determination of members  
2 entitled to notice of a plan of merger:

3 (a) The membership interests of the limited liability  
4 company were held of record by not fewer than 500 members; or

5 (b) The membership interests were registered on a  
6 national securities exchange or quoted on the National  
7 Association of Securities Dealers Automated Quotation System.

8 608.439 Conversion of certain entities to a limited  
9 liability company.--

10 (1) As used in this section, the term "other entity"  
11 means a business trust or association, a real estate  
12 investment trust, a common-law trust, or any other  
13 unincorporated business, including a partnership, whether  
14 general (including a registered limited liability partnership)  
15 or limited (including a registered limited liability limited  
16 partnership) or a foreign limited liability company.

17 (2) Any other entity may convert to a domestic limited  
18 liability company by complying with subsection (8) and filing  
19 in the Department of State in accordance with s. 608.4081:

20 (a) A certificate of conversion to a limited liability  
21 company that has been executed by one or more authorized  
22 persons in accordance with s. 608.408; and

23 (b) Articles of organization that comply with s.  
24 608.407 and have been executed by one or more authorized  
25 persons in accordance with s. 608.408.

26 (3) The certificate of conversion to a limited  
27 liability company shall state:

28 (a) The date on which and jurisdiction in which the  
29 other entity was first created, formed, or otherwise came into  
30 being and, if it has changed, its jurisdiction immediately

31

1 prior to its conversion to a domestic limited liability  
2 company;  
3 (b) The name of the other entity immediately prior to  
4 the filing of the certificate of conversion to a limited  
5 liability company;  
6 (c) The name of the limited liability company as set  
7 forth in its articles of organization filed in accordance with  
8 subsection (2); and  
9 (d) The future effective date or time (which shall be  
10 a date or time certain) of the conversion to a limited  
11 liability company if it is not to be effective upon the filing  
12 of the certificate of conversion to a limited liability  
13 company and the articles of organization.  
14 (4) Upon the filing in the Department of State of the  
15 certificate of conversion to a limited liability company and  
16 the articles of organization or upon the future effective date  
17 or time of the certificate of conversion to a limited  
18 liability company and the articles of organization, the other  
19 entity shall be converted into a domestic limited liability  
20 company and the limited liability company shall thereafter be  
21 subject to all of the provisions of this chapter, except that  
22 notwithstanding s. 608.409, the existence of the limited  
23 liability company shall be deemed to have commenced on the  
24 date the other entity commenced its existence in the  
25 jurisdiction in which the other entity was first created,  
26 formed, incorporated, or otherwise came into being.  
27 (5) The conversion of any other entity into a domestic  
28 limited liability company shall not affect any obligations or  
29 liabilities of the other entity incurred prior to its  
30 conversion to a domestic limited liability company or the  
31

1 personal liability of any person incurred prior to such  
2 conversion.

3 (6) When any conversion becomes effective under this  
4 section, for all purposes of the laws of this state, all of  
5 the rights, privileges, and powers of the other entity that  
6 has converted, and all property, real, personal, and mixed,  
7 and all debts due to such other entity, as well as all other  
8 things and causes of action belonging to such other entity,  
9 shall be vested in the domestic limited liability company and  
10 shall thereafter be the property of the domestic limited  
11 liability company as they were of the other entity that has  
12 converted, and the title to any real property vested by deed  
13 or otherwise in such other entity shall not revert or be in  
14 any way impaired by reason of this chapter, but all rights of  
15 creditors and all liens upon any property of such other entity  
16 shall be preserved unimpaired, and all debts, liabilities, and  
17 duties of the other entity that has converted shall  
18 thenceforth attach to the domestic limited liability company  
19 and may be enforced against it to the same extent as if said  
20 debts, liabilities, and duties had been incurred or contracted  
21 by it.

22 (7) Unless otherwise agreed, or as required under  
23 applicable non-Florida law, the converting entity shall not be  
24 required to wind up its affairs or pay its liabilities and  
25 distribute its assets, and the conversion shall not constitute  
26 a dissolution of such entity and shall constitute a  
27 continuation of the existence of the converting entity in the  
28 form of a domestic limited liability company.

29 (8) Prior to filing a certificate of conversion to  
30 limited liability company with the Department of State, the  
31 conversion shall be approved in the manner provided for by the

1 document, instrument, agreement, or other writing, as the case  
2 may be, governing the internal affairs of the other entity and  
3 the conduct of its business or by applicable law, as  
4 appropriate, and the articles of organization or operating  
5 agreement shall be approved by the same authorization required  
6 to approve the conversion.

7 (9) The provisions of this section shall not be  
8 construed to limit the accomplishment of a change in the law  
9 governing, or the domicile of, any other entity to this state  
10 by any other means provided for in the articles of  
11 organization or operating agreement or other agreement or as  
12 otherwise permitted by law, including by the amendment of the  
13 articles of organization or operating agreement or other  
14 agreement.

15 608.441 Dissolution.--

16 (1) A limited liability company organized under this  
17 chapter shall be dissolved, and the company's affairs shall be  
18 concluded, upon the first to occur occurrence of any of the  
19 following events:

20 (a) At the time specified in the articles of  
21 organization or operating agreement, but if no such time is  
22 set forth in the articles of organization or operating  
23 agreement, then the limited liability company shall have a  
24 perpetual existence;~~When the period fixed for the duration of~~  
25 ~~the limited liability company expires.~~

26 (b) Upon the occurrence of events specified in the  
27 articles of organization or operating agreement;~~By the~~  
28 ~~unanimous written agreement of all members.~~

29 (c) Unless otherwise provided in the articles of  
30 organization or operating agreement, upon the written consent  
31 of all of the members of the limited liability company;~~Upon~~

1 ~~the death, bankruptcy, or dissolution of a member or upon the~~  
2 ~~occurrence of any other event which terminates the continued~~  
3 ~~membership of a member in the limited liability company,~~  
4 ~~unless the business of the limited liability company is~~  
5 ~~continued by the consent of all the remaining members or under~~  
6 ~~a right to continue stated in the articles of organization of~~  
7 ~~the limited liability company.~~

8 (d) At any time there are no members; however, unless  
9 otherwise provided in the articles of organization or  
10 operating agreement, the limited liability company is not  
11 dissolved and is not required to be wound up if, within 90  
12 days, or such other period as provided in the articles of  
13 organization or operating agreement, after the occurrence of  
14 the event that terminated the continued membership of the last  
15 remaining member, the personal or other legal representative  
16 of the last remaining member agrees in writing to continue the  
17 limited liability company and agrees to the admission of the  
18 personal representative of such member or its nominee or  
19 designee to the limited liability company as a member,  
20 effective as of the occurrence of the event that terminated  
21 the continued membership of the last remaining member; or when  
22 a limited liability company has fewer than two members.

23 (e) The entry of an order of dissolution by a circuit  
24 court pursuant to subsection (3).

25 (2) So long as the limited liability company continues  
26 to have at least one remaining member, and except as otherwise  
27 provided in the articles of organization or operating  
28 agreement, the death, retirement, resignation, expulsion,  
29 bankruptcy, or dissolution of any member or the occurrence of  
30 any other event that terminates the continued membership of  
31 any member shall not cause the limited liability company to be

1 dissolved, and upon the occurrence of any such event, the  
2 limited liability company shall be continued without  
3 dissolution.

4 (3)(2) Unless otherwise provided in the articles of  
5 organization or operating agreement, on application by or for  
6 a member, the circuit court may order dissolution of a limited  
7 liability company if it is established by a preponderance of  
8 the evidence that it is not reasonably practicable to carry on  
9 the business of the limited liability company in conformity  
10 with the articles of organization or the operating agreement  
11 regulations.

12 (4)(3) Following the occurrence of any of the events  
13 specified in this section which cause the dissolution of the  
14 limited liability company, the limited liability company shall  
15 deliver articles of dissolution to the Department of State for  
16 filing.

17 608.4421 Claims against dissolved limited liability  
18 company.--

19 (1) A dissolved limited liability company may dispose  
20 of the known claims against it by following the procedures  
21 described in subsections (2), (3), and (4).

22 (2) The dissolved limited liability company shall  
23 deliver to each of its known claimants written notice of the  
24 dissolution at any time after its effective date. The written  
25 notice shall:

26 (a) Provide a reasonable description of the claim that  
27 the claimant may be entitled to assert.

28 (b) State whether the claim is admitted or not  
29 admitted, in whole or in part, and, if admitted:

30 1. The amount that is admitted, which may be as of a  
31 given date.



1           2. Any interest obligation if fixed by an instrument  
2 of indebtedness.

3           (c) Provide a mailing address where a claim may be  
4 sent.

5           (d) State the deadline, which may not be fewer than  
6 120 days after the effective date of the written notice, by  
7 which confirmation of the claim must be delivered to the  
8 dissolved limited liability company.

9           (e) State that the limited liability company may make  
10 distributions thereafter to other claimants and its members or  
11 former members without further notice.

12           (3) A dissolved limited liability company may reject,  
13 in whole or in part, any claim made by a claimant pursuant to  
14 this subsection by mailing written notice of such rejection to  
15 the claimant within 90 days after receipt of such claim and,  
16 in all events, at least 150 days before expiration of 3 years  
17 following the effective date of dissolution. A notice sent by  
18 the limited liability company pursuant to this subsection  
19 shall be accompanied by a copy of this section.

20           (4) A dissolved limited liability company electing to  
21 follow the procedures described in subsections (2) and (3)  
22 shall also give notice of the dissolution of the limited  
23 liability company to persons with claims contingent upon the  
24 occurrence or nonoccurrence of future events or otherwise  
25 conditional or unmatured, and request that such persons  
26 present such claims in accordance with the terms of such  
27 notice. Such notice shall be in substantially the form, and  
28 sent in the same manner, as described in subsection (2).

29           (5) A dissolved limited liability company shall offer  
30 any claimant whose claim is contingent, conditional, or  
31 unmatured such security as the limited liability company

1 determines is sufficient to provide compensation to the  
2 claimant if the claim matures. The dissolved limited  
3 liability company shall deliver such offer to the claimant  
4 within 90 days after receipt of such claim and, in all events,  
5 at least 150 days before expiration of 3 years following the  
6 effective date of dissolution. If the claimant offered such  
7 security does not deliver in writing to the dissolved limited  
8 liability company a notice rejecting the offer within 120 days  
9 after receipt of such offer for security, the claimant is  
10 deemed to have accepted such security as the sole source from  
11 which to satisfy the claimant's ~~his or her~~ claim against the  
12 limited liability company.

13 (6) A dissolved limited liability company which has  
14 given notice in accordance with subsections (2) and (4) shall  
15 petition the circuit court in the county where the limited  
16 liability company's principal office is located or was located  
17 at the effective date of dissolution to determine the amount  
18 and form of security that will be sufficient to provide  
19 compensation to any claimant who has rejected the offer for  
20 security made pursuant to subsection (5).

21 (7) A dissolved limited liability company which has  
22 given notice in accordance with subsection (2) shall petition  
23 the circuit court in the county where the limited liability  
24 company's principal office is located or was located at the  
25 effective date of dissolution to determine the amount and form  
26 of security which will be sufficient to provide compensation  
27 to claimants whose claims are known to the limited liability  
28 company but whose identities are unknown. The court shall  
29 appoint a guardian ad litem to represent all claimants whose  
30 identities are unknown in any proceeding brought under this  
31 subsection. The reasonable fees and expenses of such

1 guardian, including all reasonable expert witness fees, shall  
2 be paid by the petitioner in such proceeding.

3 (8) The giving of any notice or making of any offer  
4 pursuant to the provisions of this section shall not revive  
5 any claim then barred or constitute acknowledgment by the  
6 dissolved limited liability company that any person to whom  
7 such notice is sent is a proper claimant and shall not operate  
8 as a waiver of any defense or counterclaim in respect of any  
9 claim asserted by any person to whom such notice is sent.

10 (9) A dissolved limited liability company which has  
11 followed the procedures described in subsections (2)-(7):

12 (a) Shall pay the claims admitted or made and not  
13 rejected in accordance with subsection (3).

14 (b) Shall post the security offered and not rejected  
15 pursuant to subsection (5).

16 (c) Shall post any security ordered by the circuit  
17 court in any proceeding under subsections (6) and (7).

18 (d) Shall pay or make provision for all other  
19 obligations of the limited liability company.

20  
21 Such claims or obligations shall be paid in full, and any such  
22 provision for payments shall be made in full if there are  
23 sufficient funds. If there are insufficient funds, such  
24 claims and obligations shall be paid or provided for according  
25 to their priority and, among claims of equal priority, ratably  
26 to the extent of funds legally available therefor. Any  
27 remaining funds shall be distributed pursuant to s. 608.444;  
28 however, such distribution may not be made before the  
29 expiration of 150 days from the date of the last notice of  
30 rejections given pursuant to subsection (3).

31

1           (10) A dissolved limited liability company which has  
2 not followed the procedures described in subsections (2) and  
3 (3) shall pay or make reasonable provision to pay all claims  
4 and obligations, including all contingent, conditional, or  
5 unmatured claims known to the limited liability company and  
6 all claims which are known to the dissolved limited liability  
7 company but for which the identity of the claimant is unknown.  
8 Such claims shall be paid in full, and any such provision for  
9 payment made shall be made in full if there are sufficient  
10 funds. If there are insufficient funds, such claims and  
11 obligations shall be paid or provided for according to their  
12 priority and, among claims of equal priority, ratably to the  
13 extent of funds legally available therefor. Any remaining  
14 funds shall be distributed pursuant to s. 608.444.

15           (11) A member of a dissolved limited liability  
16 company, the assets of which were distributed pursuant to  
17 subsection (9) or subsection (10) is not liable for any claim  
18 against the limited liability company in an amount in excess  
19 of such member's pro rata share of the claim or the amount  
20 distributed to the member, whichever is less.

21           (12) A member of a dissolved limited liability  
22 company, the assets of which were distributed pursuant to  
23 subsection (9) is not liable for any claim against the limited  
24 liability company on which a proceeding is not begun prior to  
25 the expiration of 3 years following the effective date of  
26 dissolution.

27           (13) The aggregate liability of any member of a  
28 dissolved limited liability company for claims against the  
29 dissolved limited liability company may not exceed the amount  
30 distributed to the member in dissolution.

31

1           608.444 Distribution of assets upon dissolution.--In  
2 settling accounts after dissolution of a limited liability  
3 company, the assets of the limited liability company must be  
4 distributed in the following order:

5           (1) To creditors, including members who are creditors,  
6 to the extent permitted by law in satisfaction of liabilities  
7 of the limited liability company, whether by payment or  
8 establishment of reserves, other than liabilities for  
9 distributions to members under s. 608.426 or s. 608.427.

10           (2) Except as provided in the operating agreement  
11 ~~regulations~~, to members and former members in satisfaction of  
12 liabilities for distributions under s. 608.426 or s. 608.427.

13           (3) Except as provided in the articles of organization  
14 or the operating agreement regulations, to members pro rata in  
15 proportion to their then-current percentage, or other  
16 interests in the profits, of the company ~~respective capital~~  
17 ~~accounts~~.

18           608.447 Cancellation of articles ~~certificate~~ of  
19 organization.--The articles ~~certificate~~ of organization of a  
20 limited liability company shall be canceled by the Department  
21 of State upon issuance of the certificate of dissolution.

22           608.448 Grounds for administrative dissolution.--

23           (1) The Department of State may commence a proceeding  
24 under s. 608.4481 to administratively dissolve a limited  
25 liability company if:

26           (a) The limited liability company has failed to file  
27 its annual report or pay the annual report filing fee within  
28 the time required by this chapter.

29           (b) The limited liability company is without a  
30 registered agent or registered office in this state for 30  
31 days or more.

1 (c) The limited liability company does not notify the  
2 Department of State within 30 days that its registered agent  
3 or registered office has been changed, that its registered  
4 agent has resigned, or that its registered office has been  
5 discontinued.

6 (d) The limited liability company has failed to answer  
7 truthfully and fully, within 30 days after mailing or within  
8 such additional time as fixed by the Department of State ~~the~~  
9 ~~time prescribed by this chapter~~, interrogatories propounded by  
10 the Department of State.

11 (e) The limited liability company's period of duration  
12 has expired.

13 (2) The enumeration in subsection (1) of grounds for  
14 administrative dissolution shall not exclude actions or  
15 special proceedings by the Department of Legal Affairs or any  
16 state officials for the annulment or dissolution of a limited  
17 liability company for other causes as provided in any other  
18 law of this state.

19 608.4481 Procedure for and effect of administrative  
20 dissolution.--

21 (1) If the Department of State determines that one or  
22 more grounds exist under s. 608.448 for dissolving a limited  
23 liability company, it shall serve the limited liability  
24 company with written notice of its determination, stating the  
25 grounds therefor.

26 (2) If the limited liability company does not correct  
27 each ground for dissolution or demonstrate to the reasonable  
28 satisfaction of the Department of State that each ground  
29 determined by the Department of State does not exist within 60  
30 days after issuance of the notice, the Department of State  
31 shall administratively dissolve the limited liability company

1 by issuing a certificate of dissolution that recites the  
2 ground or grounds for dissolution and its effective date.

3 (3) A limited liability company administratively  
4 dissolved continues its existence but may not carry on any  
5 business except that necessary to wind up and liquidate its  
6 business and affairs under s. 608.4431 and notify claimants  
7 under s. 608.4421.

8 (4) A manager or member of a limited liability company  
9 dissolved pursuant to this section, purporting to act on  
10 behalf of the limited liability company, is personally liable  
11 for the debts, obligations, and liabilities of the limited  
12 liability company arising from such action and incurred  
13 subsequent to the limited liability company's administrative  
14 dissolution only if the manager or member ~~he or she~~ has actual  
15 notice of the administrative dissolution at the time such  
16 action is taken; but such liability shall be terminated upon  
17 the ratification of such action by the limited liability  
18 company's members subsequent to the reinstatement of the  
19 limited liability company under s. 608.4482.

20 (5) The administrative dissolution of a limited  
21 liability company does not terminate the authority of its  
22 registered agent.

23 608.449 Grounds for judicial dissolution.--A circuit  
24 court may dissolve a limited liability company:

25 (1)(a) In a proceeding by the Department of Legal  
26 Affairs if it is established that:

27 1. The limited liability company obtained its articles  
28 of organization through fraud; or

29 2. The limited liability company has continued to  
30 exceed or abuse the authority conferred upon it by law.

31

1           (b) The enumeration in paragraph (a) of grounds for  
2 involuntary dissolution does not exclude actions or special  
3 proceedings by the Department of Legal Affairs or any state  
4 official for the annulment or dissolution of a limited  
5 liability company for other causes as provided in any other  
6 law of this state.

7           (2) In a proceeding by a manager or member if it is  
8 established that:

9           (a) The managers or members are deadlocked in the  
10 management of the limited liability company affairs, the  
11 members are unable to break the deadlock, and irreparable  
12 injury to the limited liability company is threatened or being  
13 suffered; or

14           (b) The limited liability company's assets are being  
15 misappropriated ~~misappointed~~ or wasted.

16           (3) In a proceeding by a creditor if it is established  
17 that:

18           (a) The creditor's claim has been reduced to judgment,  
19 the execution on that judgment returned unsatisfied, and the  
20 limited liability company is insolvent; or

21           (b) The limited liability company has admitted in  
22 writing that the creditor's claim is due and owing and the  
23 limited liability company is insolvent.

24           (4) In a proceeding by the limited liability company  
25 to have its voluntary dissolution continued under court  
26 supervision.

27           608.4492 Receivership or custodianship.--

28           (1) A court in a judicial proceeding brought to  
29 dissolve a limited liability company may appoint one or more  
30 receivers to wind up and liquidate, or one or more custodians  
31 to manage, the business and affairs of the limited liability



1 company. The court shall hold a hearing, after notifying all  
2 parties to the proceeding and any interested persons  
3 designated by the court, before appointing a receiver or  
4 custodian. The court appointing a receiver or custodian has  
5 exclusive jurisdiction over the limited liability company and  
6 all of its property wherever located.

7 (2) The court may appoint a person authorized to act  
8 as a receiver or custodian. The court may require the  
9 receiver or custodian to post bond, with or without sureties,  
10 in an amount the court directs.

11 (3) The court shall describe the powers and duties of  
12 the receiver or custodian in its appointing order, which may  
13 be amended from time to time. Among other powers:

14 (a) The receiver:

15 1. May dispose of all or any part of the assets of the  
16 limited liability company wherever located, at a public or  
17 private sale, if authorized by the court.

18 2. May sue and defend in the receiver's ~~his or her~~ own  
19 name as receiver of the limited liability company in all  
20 courts of this state.

21 (b) The custodian may exercise all of the powers of  
22 the limited liability company, through or in place of its  
23 managers or members, to the extent necessary to manage the  
24 affairs of the limited liability company in the best interests  
25 of its members and creditors.

26 (4) The court during a receivership may redesignate  
27 the receiver a custodian, and during a custodianship may  
28 redesignate the custodian a receiver, if doing so is in the  
29 best interests of the limited liability company and its  
30 members and creditors.

31

1           (5) The court from time to time during the  
2 receivership or custodianship may order compensation paid and  
3 expense disbursements or reimbursements made to the receiver  
4 or custodian and the receiver's or custodian's ~~his or her~~  
5 counsel from the assets of the limited liability company or  
6 proceeds from the sale of assets.

7           (6) The court has jurisdiction to appoint an ancillary  
8 receiver for the assets and business of a limited liability  
9 company. The ancillary receiver shall serve ancillary to a  
10 receiver located in any other state, whenever the court deems  
11 that circumstances exist requiring the appointment of such a  
12 receiver. The court may appoint such an ancillary receiver for  
13 a foreign limited liability company even though no receiver  
14 has been appointed elsewhere. Such receivership shall be  
15 converted into an ancillary receivership when an order entered  
16 by a court of competent jurisdiction in the other state  
17 provides for a receivership of the limited liability company.

18           608.4511 Annual report for Department of State.--

19           (1) Each domestic limited liability company and each  
20 foreign limited liability company authorized to transact  
21 business in this state shall deliver to the Department of  
22 State for filing a sworn annual report on such forms as the  
23 Department of State prescribes that sets forth:

24           (a) The name of the limited liability company and the  
25 state or country under the law of which it is organized.

26           (b) The date of organization or, if a foreign limited  
27 liability company, the date on which it was admitted to do  
28 business in this state.

29           (c) The street address and the mailing address of its  
30 principal office.

31

1           (d) The limited liability company's federal employer  
2 identification number or, if none, whether one has been  
3 applied for.

4           (e) The names and business, residence, or mailing  
5 ~~street~~ address of its managing members or ~~and~~ managers.

6           (f) The street address of its registered office and  
7 the name of its registered agent at that office in this state.

8           (g) Such additional information as may be necessary or  
9 appropriate to enable the Department of State to carry out the  
10 provisions of this chapter.

11           (2) Proof to the satisfaction of the Department of  
12 State that on or before May 1 such report was deposited in the  
13 United States mail in a sealed envelope, properly addressed  
14 with postage prepaid, shall be deemed timely compliance with  
15 this requirement.

16           (3) If an annual report does not contain the  
17 information required by this section, the Department of State  
18 shall promptly notify the reporting domestic or foreign  
19 limited liability company in writing and return the report to  
20 it for correction. If the report is corrected to contain the  
21 information required by this section and delivered to the  
22 Department of State within 30 days after the effective date of  
23 notice, it is deemed to be timely filed.

24           (4) Each report shall be executed by the limited  
25 liability company by a managing member or manager or, if the  
26 limited liability company is in the hands of a receiver or  
27 trustee, shall be executed on behalf of the limited liability  
28 company by such receiver or trustee, and the signing thereof  
29 shall have the same legal effect as if made under oath,  
30 without the necessity of appending such oath thereto.

31

1           (5) The first annual report shall be delivered to the  
2 Department of State between January 1 and May 1 of the year  
3 following the calendar year in which a domestic limited  
4 liability company was organized or a foreign limited liability  
5 company was authorized to transact business. Subsequent  
6 annual reports shall be delivered to the Department of State  
7 between January 1 and May 1 of the subsequent calendar years.

8           (6) Information in the annual report shall be current  
9 as of the date the annual report is executed on behalf of the  
10 limited liability company.

11           (7) Any limited liability company failing to file an  
12 annual report which complies with the requirements of this  
13 section shall not be permitted to prosecute, maintain, or  
14 defend any action in any court of this state until such report  
15 is filed and all fees, penalties, and taxes due under this  
16 chapter are paid and shall be subject to dissolution or  
17 cancellation of its certificate of authority to do business as  
18 provided in this chapter.

19           608.452 Fees of the Department of State.--The fees of  
20 the Department of State under this chapter are as follows:

21           (1) For furnishing a certified copy, \$30~~\$52.50~~.

22           (2) For filing original articles of organization, or  
23 articles of revocation of dissolution, or a foreign limited  
24 liability company's application for a certificate of authority  
25 to transact business, \$100~~\$250~~.

26           (3) For filing articles of merger of limited liability  
27 companies or other business entities, \$25 per constituent  
28 party to the merger, unless a specific fee is required for a  
29 party in other applicable law ~~a supplemental affidavit~~  
30 ~~declaring the amount of capital contributions of the members~~  
31

1 ~~when there is an increase in capital contribution beyond the~~  
2 ~~anticipated amount, \$250.~~

3 (4) For filing an annual report, \$50~~\$100~~.

4 (5) For filing an application for reinstatement after  
5 an administrative or judicial dissolution or a revocation of  
6 authority to transact business, \$100~~\$500~~.

7 (6) For filing a certificate designating a registered  
8 agent or changing a registered agent, \$25~~\$35~~.

9 (7) For filing a registered agent's statement of  
10 resignation from an active limited liability company, \$85  
11 ~~\$87.50~~.

12 (8) For filing a registered agent's statement of  
13 resignation from a dissolved limited liability company, \$25  
14 ~~\$35~~.

15 (9) For filing any other limited liability company  
16 document, \$25~~\$52.50~~.

17 (10) For furnishing a certificate of status, \$5 ~~A~~  
18 ~~supplemental corporate fee imposed pursuant to s. 607.193.~~

19 608.455 Waiver of notice.--When, under the provisions  
20 of this chapter or under the provisions of the articles of  
21 organization or operating agreement ~~regulations~~ of a limited  
22 liability company, notice is required to be given to a member  
23 of a limited liability company or to a manager of a limited  
24 liability company having a manager or managers, a waiver in  
25 writing signed by the person or persons entitled to the  
26 notice, whether made before or after the time for notice to be  
27 given, is equivalent to the giving of notice.

28 608.463 Service of process.--

29 (1) Process against a limited liability company may be  
30 served:  
31

1 (a) In accordance with chapter 48 or chapter 49, as if  
2 the company were a partnership.

3 (b) Upon the registered agent at the agent's street  
4 ~~his or her business~~ address.

5 (2) Any notice to or demand on a company organized  
6 pursuant to this chapter may be made:

7 (a) By delivery to a manager of the company, if the  
8 management of the limited liability company is vested in a  
9 manager, or by delivery to a ~~any~~ member, if the management of  
10 the limited liability company is vested in the members.

11 (b) By mailing a writing, which notice or demand in  
12 writing is mailed to the registered office of the company in  
13 this state or to another address in this state which is the  
14 principal office of the company.

15 (3) Nothing contained in this section shall limit or  
16 affect the right to serve, in any other manner now or  
17 hereafter permitted by law, any process, notice, or demand  
18 required or permitted by law to be served upon a limited  
19 liability company.

20 608.471 Tax exemption on income of certain limited  
21 liability companies.--

22 (1) A limited liability company classified as a  
23 partnership for federal income tax purposes, or a single  
24 member limited liability company which is disregarded as an  
25 entity separate from its owner for federal income tax  
26 purposes, and organized pursuant to this chapter or qualified  
27 to do business in this state as a foreign limited liability  
28 company is not an "artificial entity" within the purview of s.  
29 220.02 and is not subject to the tax imposed under chapter  
30 220.

31

1           ~~(2) The income of a limited liability company that is~~  
2 ~~classified as a partnership for federal income tax purposes~~  
3 ~~and that is organized pursuant to this chapter or is qualified~~  
4 ~~to do business in this state as a foreign limited liability~~  
5 ~~company shall not be subject to the Florida Income Tax Code~~  
6 ~~and the tax levied pursuant to chapter 220.~~

7           (2)(3) For purposes of taxation under chapter 220, a  
8 limited liability company formed in this state or authorized  
9 to transact business in this state as a foreign limited  
10 liability company shall be classified as a partnership, or a  
11 limited liability company which has only one member shall be  
12 disregarded as an entity separate from its owner for federal  
13 income tax purposes, unless classified otherwise for federal  
14 income tax purposes, in which case the limited liability  
15 company shall be classified identically to its classification  
16 for federal income tax purposes. For purposes of taxation  
17 under chapter 220, a member or an assignee of a member of a  
18 limited liability company formed in this state or qualified to  
19 do business in this state as a foreign limited liability  
20 company shall be treated as a resident or nonresident partner  
21 unless classified otherwise for federal income tax purposes,  
22 in which case the member or assignee of a member shall have  
23 the same status as such member or assignee of a member has for  
24 federal income tax purposes.

25           608.502 Consequences of transacting business without  
26 authority.--

27           (1) A foreign limited liability company transacting  
28 business in this state without a certificate of authority may  
29 not maintain a proceeding in any court in this state until it  
30 obtains a certificate of authority.

31

1           (2) The successor to a foreign limited liability  
2 company that transacted business in this state without a  
3 certificate of authority and the assignee of a cause of action  
4 arising out of that business may not maintain a proceeding  
5 based on that cause of action in any court in this state until  
6 the foreign limited liability company or its successor obtains  
7 a certificate of authority.

8           (3) A court may stay a proceeding commenced by a  
9 foreign limited liability company or its successor or assignee  
10 until it determines whether the foreign limited liability  
11 company or its successor requires a certificate of authority.  
12 If it so determines, the court may further stay the proceeding  
13 until the foreign limited liability company or its successor  
14 obtains the certificate.

15           (4) A foreign limited liability company which  
16 transacts business in this state without authority to do so  
17 shall be liable to this state for the years or parts thereof  
18 during which it transacted business in this state without  
19 authority in an amount equal to all fees, penalties, and taxes  
20 which would have been imposed by this chapter upon such  
21 limited liability company had it duly applied for and received  
22 authority to transact business in this state as required by  
23 this chapter. In addition to the payments thus prescribed,  
24 such limited liability company shall be liable for a civil  
25 penalty of not less than \$500 or more than \$1,000 for each  
26 year or part thereof during which it transacts business in  
27 this state without a certificate of authority. The Department  
28 of State may collect all penalties due under this subsection.

29           (5) Notwithstanding subsections (1) and (2), the  
30 failure of a foreign limited liability company to obtain a  
31 certificate of authority does not impair the validity of any



1 of its contracts, deeds, mortgages, security interests, or  
2 acts or prevent it from defending any proceeding in this  
3 state.

4 (6) A member or a manager of a foreign limited  
5 liability company is not liable for the obligations of the  
6 foreign limited liability company solely by reason of the  
7 limited liability company's having transacted business in this  
8 state without a certificate of authority.

9 (7) If a foreign limited liability company transacts  
10 business in this state without a certificate of authority, the  
11 foreign limited liability company appoints the Secretary of  
12 State as its agent for substitute service of process pursuant  
13 to s. 48.181 for claims arising out of the transaction of  
14 business in this state.

15 608.503 Application for certificate of authority.--

16 (1) A foreign limited liability company may apply for  
17 a certificate of authority to transact business in this state  
18 by delivering an application to the Department of State for  
19 filing. Such application shall be made on forms prescribed and  
20 furnished by the Department of State and shall set forth:

21 (a) The name of the foreign limited liability company,  
22 which shall satisfy the requirements of s. 608.506.

23 (b) The jurisdiction under the law of which it is  
24 organized.

25 (c) Its date of organization and period of duration.

26 (d) The street address of its principal office.

27 (e) The street address of its registered office in  
28 this state and the name of its registered agent at that  
29 office.

30  
31

1           (f) Whether or not the limited liability company is  
2 manager-managed and, if so, the names and usual business  
3 addresses of its managing members or managers.

4           (g) The nature of the business or purposes to be  
5 conducted or promoted in this state.

6           (h)~~(g)~~ Such additional information as may be necessary  
7 or appropriate in order to enable the Department of State to  
8 determine whether such limited liability company is entitled  
9 to file an application for authority to transact business in  
10 this state and to determine and assess the fees, penalties,  
11 and taxes payable as prescribed in this chapter.

12           (2) The foreign limited liability company shall  
13 deliver with the completed application ~~an affidavit as~~  
14 ~~provided in s. 608.407(2), as well as~~ a certificate of  
15 existence, or a document of similar import, duly authenticated  
16 by the official having custody of records in the jurisdiction  
17 under the law of which it is organized, not more than 90 days  
18 prior to delivery of the application to the Department of  
19 State, ~~by the Secretary of State or other official having~~  
20 ~~custody of records in the jurisdiction under the law of which~~  
21 ~~it is incorporated.~~ A translation of the certificate, under  
22 oath of the translator, shall be attached to a certificate  
23 which is in a language other than the English language.

24           (3) A foreign limited liability company shall not be  
25 denied authority to transact business in this state by reason  
26 of the fact that the laws of the jurisdiction under which such  
27 limited liability company is organized governing its  
28 organization and internal affairs differ from the laws of this  
29 state.

30           608.504 Amended certificate of authority.--

31

1           (1) A foreign limited liability company authorized to  
2 transact business in this state shall make application to the  
3 Department of State to obtain an amended certificate of  
4 authority if any statement in the company's application was  
5 false or becomes false due to change in circumstances or if  
6 the foreign limited liability company ~~it~~ changes:

7           (a) Its limited liability company name.

8           (b) The period of its duration.

9           (c) The jurisdiction of its organization.

10          (2) Such application shall be made within 30 days  
11 after the occurrence of any change set forth in subsection  
12 (1), shall be made on forms prescribed by the Department of  
13 State, shall be executed and filed in the same manner as an  
14 original application for authority, and shall set forth:

15          (a) The name of the foreign limited liability company  
16 as it appears on the records of the Department of State.

17          (b) The jurisdiction of its organization.

18          (c) The date it was authorized to do business in this  
19 state.

20          (d) If the name of the foreign limited liability  
21 company has been changed, the name relinquished, the new name,  
22 a statement that the change of name has been effected under  
23 the laws of the jurisdiction of its organization, and the date  
24 the change was effected.

25          (e) If the amendment changes its period of duration, a  
26 statement of such change.

27          (f) If the amendment changes the jurisdiction of its  
28 organization, a statement of such change.

29          (3) The requirements of s. 608.503 for obtaining an  
30 original certificate of authority apply to obtaining an  
31 amended certificate under this section.

1           608.505 Effect of certificate of authority.--

2           (1) A certificate of authority authorizes the foreign  
3 limited liability company to which it is issued to transact  
4 business in this state subject, however, to the right of the  
5 Department of State to suspend or revoke the certificate as  
6 provided in this chapter.

7           (2) A foreign limited liability company with a valid  
8 certificate of authority has the same but no greater rights  
9 and privileges than a domestic limited liability company.  
10 Unless has the same but no greater privileges as, and, except  
11 as otherwise provided by this chapter, a foreign limited  
12 liability company is subject to the same duties, restrictions,  
13 penalties, and liabilities now or later imposed on, a domestic  
14 limited liability company of like character.

15           (3) This chapter does not authorize this state to  
16 regulate the organization or internal affairs of a foreign  
17 limited liability company authorized to transact business in  
18 this state. The laws of the state or other jurisdiction under  
19 which a foreign limited liability company is organized govern  
20 the foreign limited liability company's organization, internal  
21 affairs, and the liability of its managers, members, and their  
22 transferees.

23           608.507 Registered office and registered agent of  
24 foreign limited liability company.--Each foreign limited  
25 liability company ~~authorized to transact business~~ in this  
26 state must continuously maintain in this state:

27           (1) A registered office that may be the same as any of  
28 its places of business.

29           (2) A registered agent, who may be:

30           (a) An individual who resides in this state and whose  
31 business office is identical with the registered office;

1 (b) A domestic corporation or domestic limited  
2 liability company the business office of which is identical  
3 with the registered office; or

4 (c) A foreign corporation or foreign limited liability  
5 company authorized to transact business in this state the  
6 business office of which is identical with the registered  
7 office.

8 608.508 Change of registered office and registered  
9 agent of foreign limited liability company.--

10 (1) A foreign limited liability company authorized to  
11 transact business in this state may change its registered  
12 office or registered agent by delivering to the Department of  
13 State for filing a statement of change which satisfies the  
14 requirements of s. 608.408 and sets forth:

15 (a) Its name.

16 (b) The street address of its current registered  
17 office.

18 (c) If the current registered office is to be changed,  
19 the street address of its new registered office.

20 (d) The name of its current registered agent.

21 (e) If the current registered agent is to be changed,  
22 the name of its new registered agent and the new agent's  
23 written consent, either on the statement or attached to it, to  
24 the appointment.

25 (f) That, after the change or changes are made, the  
26 street address of its registered office and the business  
27 office of its registered agent will be identical.

28 (2) If a registered agent changes the street address  
29 of such agent's ~~his or her~~ business office, the registered  
30 agent ~~he or she~~ may change the street address of the  
31 registered office of any foreign limited liability company for

1 which the agent ~~he or she~~ is the registered agent by notifying  
2 the limited liability company in writing of the change and  
3 signing, either manually or in facsimile, and delivering to  
4 the Department of State for filing a statement of change that  
5 complies with the requirements of paragraphs (1)(a)-(f) and  
6 recites that the limited liability company has been notified  
7 of the change.

8           608.512 Grounds for revocation of authority to  
9 transact business.--The Department of State may commence a  
10 proceeding under s. 608.513 to revoke the certificate of  
11 authority of a foreign limited liability company authorized to  
12 transact business in this state if:

13           (1) The foreign limited liability company has failed  
14 to file its annual report with the Department of State within  
15 the time required by this chapter.

16           (2) The foreign limited liability company does not  
17 pay, within the time required by this chapter, any fees,  
18 taxes, or penalties imposed by this chapter or other law.

19           (3) The foreign limited liability company is without a  
20 registered agent or registered office in this state for 30  
21 days or more.

22           (4) The foreign limited liability company does not  
23 notify the Department of State under s. 608.508 or s. 608.509  
24 that its registered agent has resigned or that its registered  
25 office has been discontinued within 30 days after the  
26 resignation or discontinuance.

27           (5) The foreign limited liability company's period of  
28 duration has expired.

29           (6) A member, manager, or agent of the foreign limited  
30 liability company signed a document the member, manager, or  
31 agent ~~he or she~~ knew was false in any material respect with

1 intent that the document be delivered to the Department of  
2 State for filing.

3 (7) The Department of State receives a duly  
4 authenticated certificate from the ~~Secretary of State~~ or other  
5 official having custody of records in the jurisdiction under  
6 the law of which the foreign limited liability company is  
7 incorporated stating that it has been dissolved or disappeared  
8 as a result of a merger.

9 (8) The foreign limited liability company has failed  
10 to answer truthfully and fully, within the time prescribed in  
11 s. 608.448 ~~by this chapter~~, interrogatories propounded by the  
12 Department of State.

13 (9) The foreign limited liability company failed to  
14 amend its certificate of authority as required by s. 608.504.

15 608.5135 Revocation; application for reinstatement.--

16 (1)(a) If A foreign limited liability company the  
17 certificate of authority of a limited liability company ~~which~~  
18 ~~has been revoked,~~ the foreign limited liability company  
19 ~~pursuant to s. 608.513~~ may apply to the Department of State  
20 for reinstatement at any time after the effective date of  
21 revocation of authority. The application must:

22 1. Recite the name of the foreign limited liability  
23 company and the effective date of its revocation of authority;

24 2. State that the ground or grounds for revocation of  
25 authority either did not exist or have been eliminated and  
26 that no further grounds currently exist for revocation of  
27 authority;

28 3. State that the foreign limited liability company's  
29 name satisfies the requirements of s. 608.506; and

30 4. State that all taxes, fees, and penalties owed by  
31 the limited liability company and computed at the rate

1 provided by law at the time the foreign limited liability  
2 company applies for reinstatement have been paid; or

3 (b) As an alternative, the foreign limited liability  
4 company may submit a current annual report, signed by the  
5 registered agent and a manager or managing member, which  
6 substantially complies with the requirements of paragraph (a).

7 (2) If the Department of State determines that the  
8 application contains the information required by subsection  
9 (1) and that the information is correct, it shall cancel the  
10 certificate of revocation of authority.

11 (3) When the reinstatement is effective, it relates  
12 back to and takes effect as of the effective date of the  
13 revocation of authority, and the foreign limited liability  
14 company resumes carrying on its business as if the revocation  
15 of authority had never occurred.

16 (4) The name of the foreign limited liability company  
17 the certificate of authority of which has been revoked is not  
18 available for assumption or use by another limited liability  
19 company until 1 year after the effective date of revocation of  
20 authority unless the limited liability company provides the  
21 Department of State with an affidavit executed as required by  
22 s. 608.408 permitting the immediate assumption or use of its  
23 name by another limited liability company.

24 (5) If the name of the foreign limited liability  
25 company has been lawfully assumed in this state by another  
26 limited liability company, the Department of State shall  
27 require the foreign limited liability company to comply with  
28 s. 608.506 before accepting its application for reinstatement.

29 608.601 Member's derivative actions.--

30 (1) A person may not commence a proceeding in the  
31 right of a domestic or foreign limited liability company



1 unless the person was a member of the limited liability  
2 company when the transaction complained of occurred or unless  
3 the person became a member through transfer by operation of  
4 law from one who was a member at that time.

5 (2) A complaint in a proceeding brought in the right  
6 of a limited liability company must be verified and allege  
7 with particularity the demand made to obtain action by the  
8 managing members of a member-managed company or the managers  
9 of a manager-managed company and that the demand was refused  
10 or ignored. If the limited liability company commences an  
11 investigation of the charges made in the demand or complaint,  
12 the court may stay any proceeding until the investigation is  
13 completed.

14 (3) The court may dismiss a derivative proceeding if,  
15 on motion by the limited liability company, the court finds  
16 that one of the groups specified in paragraphs (a)-(c) has  
17 made a determination in good faith after conducting a  
18 reasonable investigation upon which its conclusions are based  
19 that the maintenance of the derivative suit is not in the best  
20 interests of the limited liability company. The limited  
21 liability company shall have the burden of proving the  
22 independence and good faith of the group making the  
23 determination and the reasonableness of the investigation. The  
24 determination shall be made by:

25 (a) A majority vote of independent managing members of  
26 a member-managed company or of independent managers of a  
27 manager-managed company present at a meeting of the managing  
28 members of a member-managed company or of managers of a  
29 manager-managed company, if the independent managing members  
30 or managers, as applicable, constitute a quorum;

31

1           (b) A majority vote of a committee consisting of two  
2 or more independent managing members of a member-managed  
3 company or of independent managers of a manager-managed  
4 company appointed by a majority vote of independent managing  
5 members or managers, as applicable, present at a meeting of  
6 the managing members of a member-managed company or of  
7 managers of a manager-managed company, whether or not such  
8 independent managing members or managers, as applicable,  
9 constitute a quorum; or

10           (c) A panel of one or more independent persons  
11 appointed by the court upon motion by the limited liability  
12 company.

13           (4) A proceeding commenced under this section may not  
14 be discontinued or settled without the court's approval. If  
15 the court determines that a proposed discontinuance or  
16 settlement will substantially affect the interest of the  
17 limited liability company's members or a class, series, or  
18 voting group of members, the court shall direct that notice be  
19 given to the members affected. The court may determine which  
20 party or parties to the proceeding shall bear the expense of  
21 giving the notice.

22           (5) On termination of the proceeding, the court may  
23 require the plaintiff to pay any defendant's reasonable  
24 expenses, including reasonable attorney's fees, incurred in  
25 defending the proceeding if it finds that the proceeding was  
26 commenced without reasonable cause.

27           (6) The court may award reasonable expenses for  
28 maintaining the proceeding, including reasonable attorney's  
29 fees, to a successful plaintiff or to the person commencing  
30 the proceeding who receives any relief, whether by judgment,  
31 compromise, or settlement, and require that the person account

1 for the remainder of any proceeds to the limited liability  
2 company; however, this subsection does not apply to any relief  
3 rendered for the benefit of injured members only and limited  
4 to a recovery of the loss or damage of the injured members.

5 (7) For purposes of this section, "member" includes a  
6 beneficial owner whose limited liability company interests are  
7 held in a voting trust or held by a nominee on the member's  
8 behalf.

9 608.701 Application of corporation case law to set  
10 aside limited liability.--In any case in which a party seeks  
11 to hold the members of a limited liability company personally  
12 responsible for the liabilities or alleged improper actions of  
13 the limited liability company, the court shall apply the case  
14 law which interprets the conditions and circumstances under  
15 which the corporate veil of a corporation may be pierced under  
16 the law of this state.

17 608.702 Certificates and certified copies to be  
18 received in evidence.--All certificates issued by the  
19 Department of State in accordance with this chapter, and all  
20 copies of records filed in the Department of State in  
21 accordance with this chapter when certified by the Department  
22 of State, shall be taken and received in all courts, public  
23 offices, and official bodies as prima facie evidence of the  
24 facts therein stated. A certificate under the seal of the  
25 Department of State, as to the existence or nonexistence of  
26 the facts relating to a limited liability company or foreign  
27 limited liability company, shall be taken and received in all  
28 courts, public offices, and official bodies as prima facie  
29 evidence of the existence or nonexistence of the facts therein  
30 stated.

31 608.703 Interrogatories by Department of State.--

1           (1) The Department of State may direct to any limited  
2 liability company or foreign limited liability company subject  
3 to this chapter, and to any member or manager of any limited  
4 liability company or foreign limited liability company subject  
5 to this chapter, any interrogatories reasonably necessary and  
6 proper to enable the Department of State to ascertain whether  
7 the limited liability company or foreign limited liability  
8 company has complied with all of the provisions of this  
9 chapter applicable to the limited liability company or foreign  
10 limited liability company. The interrogatories shall be  
11 answered within 30 days after the date of mailing, or within  
12 such additional time as fixed by the Department of State. The  
13 answers to the interrogatories shall be full and complete and  
14 shall be made in writing and under oath. If the  
15 interrogatories are directed to an individual, they shall be  
16 answered by the individual, and if directed to a limited  
17 liability company or foreign limited liability company, they  
18 shall be answered by a manager of a manager-managed company, a  
19 member of a member-managed company, or a fiduciary if the  
20 company is in the hands of a receiver, trustee, or other  
21 court-appointed fiduciary.

22           (2) The Department of State need not file any record  
23 in a court of competent jurisdiction to which the  
24 interrogatories relate until the interrogatories are answered  
25 as provided in this chapter, and not then if the answers  
26 thereto disclose that the record is not in conformity with the  
27 requirements of this chapter or if the Department of State has  
28 determined that the parties to such document have not paid all  
29 fees, taxes, and penalties due and owing this state. The  
30 Department of State shall certify to the Department of Legal  
31 Affairs, for such action as the Department of Legal Affairs

1 may deem appropriate, all interrogatories and answers which  
2 disclose a violation of this chapter.

3 (3) The Department of State may, based upon its  
4 findings hereunder or as provided in s. 213.053(14), bring an  
5 action in circuit court to collect any penalties, fees, or  
6 taxes determined to be due and owing the state and to compel  
7 any filing, qualification, or registration required by law. In  
8 connection with such proceeding, the department may, without  
9 prior approval by the court, file a lis pendens against any  
10 property owned by the corporation and may further certify any  
11 findings to the Department of Legal Affairs for the initiation  
12 of any action permitted pursuant to this chapter which the  
13 Department of Legal Affairs may deem appropriate.

14 (4) The Department of State shall have the power and  
15 authority reasonably necessary to enable it to administer this  
16 chapter efficiently, to perform the duties herein imposed upon  
17 it, and to adopt reasonable rules necessary to carry out its  
18 duties and functions under this chapter.

19 Section 2. Sections 608.4062, 608.412, 608.424, and  
20 608.4494, Florida Statutes, are repealed.

21 Section 3. This act shall take effect October 1, 1999.

22  
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24 COMMITTEE SUBSTITUTE FOR  
25 SB 1696

26 The committee substitute authorizes the pension plan of a  
27 limited liability company to include employees of the company.  
28 Clarifies the definition of "recklessness."  
29  
30  
31