

**Chapter 57C.**  
**North Carolina Limited Liability Company Act.**  
Article 1.  
General Provisions.

Part 1. Short Title; Reservation of Power; Definitions.

**§ 57C-1-01. Short title.**

This Chapter is the "North Carolina Limited Liability Company Act" and may be cited by that name. (1993, c. 354, s. 1.)

**§ 57C-1-02. Reservation of power to amend or repeal.**

The General Assembly has power to amend or repeal all or part of this Chapter at any time and all domestic limited liability companies and foreign limited liability companies subject to this Chapter are governed by the amendment or repeal. (1993, c. 354, s. 1.)

**§ 57C-1-03. Definitions.**

The following definitions apply in this Chapter, unless otherwise specifically provided:

- (1) Articles of organization. – The document filed under G.S. 57C-2-20 of this Chapter for the purpose of forming a limited liability company, as amended or restated.
- (2) Bankrupt. – Bankrupt under the United States Bankruptcy Code, as amended, or insolvent under State insolvency laws.
- (3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not such trade, investment, purpose, or activity is carried on for profit.
- (3a) Business entity. – A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (4) Corporation or domestic corporation. – Has the same meaning as in G.S. 55-1-40(4).
- (5) Court. – Includes every court and judge having jurisdiction in the case.
- (5a) Director. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with, or is one of a group of persons so vested with, the authority to direct the management of the limited liability company's affairs.
- (6) Distribution. – A direct or indirect transfer of money or other property or inurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their membership interests.
- (6a) Domestic nonprofit corporation. – A corporation as defined in G.S. 55A-1-40(5).
- (6b) Executive. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with authority to participate in the management of the limited liability company's affairs under the direction of the limited liability company's managers or directors.
- (7) Foreign corporation. – Has the same meaning as in G.S. 55-1-40(10).

- 1 (8) Foreign limited liability company. – An unincorporated organization formed  
2 under laws other than the laws of this State, that affords to each of its  
3 members, pursuant to the laws under which it is formed, limited liability  
4 with respect to the liabilities of the organization.
- 5 (9) Foreign limited partnership. – Has the same meaning as in G.S. 59-102(5).
- 6 (9a) Foreign nonprofit corporation. – A foreign corporation as defined in G.S.  
7 55A-1-40(11).
- 8 (10) Individual. – A human being.
- 9 (10a) Liabilities, debts, and obligations. – Have one and the same meaning and are  
10 used interchangeably throughout this Chapter. Reference to "liabilities,"  
11 "debts," or "obligations" whether individually or in any combination, is  
12 deemed to reference "all liabilities, debts, and obligations, whether arising in  
13 contract, tort, or otherwise."
- 14 (11) Limited liability company or domestic limited liability company. – An entity  
15 formed and existing under this Chapter.
- 16 (12) Limited partnership or domestic limited partnership. – Has the same  
17 meaning as in G.S. 59-102(8).
- 18 (12a) Management of the affairs. – In respect of an entity, unless the context  
19 indicates otherwise, the authority to direct and participate in the management  
20 of the entity.
- 21 (13) Manager. – Has the following meanings: (i) with respect to a domestic  
22 limited liability company, any person designated in, or in accordance with,  
23 G.S. 57C-3-20(a), and (ii) with respect to a foreign limited liability  
24 company, any person authorized to act for and bind the foreign limited  
25 liability company.
- 26 (14) Member. – A person who has been admitted to membership in the limited  
27 liability company as provided in G.S. 57C-3-01 until the person's  
28 membership ceases as provided in G.S. 57C-3-02 or G.S. 57C-5-02.
- 29 (15) Membership interest or interest. – In the context of a member of a limited  
30 liability company, the terms mean all of a member's rights in the limited  
31 liability company, including any share of the profits and losses of the limited  
32 liability company, any right to receive distributions of the limited liability  
33 company assets, any right to vote on matters relating to the limited liability  
34 company, and any right to participate in the management of the limited  
35 liability company's affairs.
- 36 (16) Operating agreement. – Any agreement, written or oral, of the members with  
37 respect to the affairs of a limited liability company and the conduct of its  
38 business that is binding on all the members. An operating agreement shall  
39 include, in the case of a limited liability company with only one member,  
40 any writing signed by the member, without regard to whether the writing  
41 constitutes an agreement, that relates to the affairs of the limited liability  
42 company and the conduct of its business.
- 43 (16a) Organizer. – A person who executes the articles of organization of a limited  
44 liability company in the capacity of an organizer.
- 45 (17) Person. – An individual, a trust, an estate, or a domestic or foreign  
46 corporation, a domestic or foreign professional corporation, a domestic or  
47 foreign partnership, a domestic or foreign limited partnership, a domestic or  
48 foreign limited liability company, an unincorporated association, or another  
49 entity.
- 50 (17a) Principal office. – The office, in or out of this State, where the principal  
51 executive offices of a domestic or foreign limited liability company are

1 located, as designated in its most recent annual report filed with the  
2 Secretary of State or, in the case of a domestic or foreign limited liability  
3 company that has not yet filed an annual report, in its articles of organization  
4 or application for a certificate of authority, respectively.

- 5 (18) State. – A state, territory, or possession of the United States, the District of  
6 Columbia, or the Commonwealth of Puerto Rico. (1993, c. 354, s. 1; 1995, c.  
7 351, ss. 1, 2; 1999-189, s. 1; 1999-369, ss. 3.2, 3.3; 1999-456, s. 52(a);  
8 2000-140, s. 101(t); 2001-387, ss. 48-52.)  
9

10 **§§ 57C-1-04 through 57C-1-19. Reserved for future codification purposes.**

11  
12 Part 2. Filing Documents.

13 **§ 57C-1-20. Filing requirements.**

14 (a) A document required or permitted by this Chapter to be filed by the Secretary of  
15 State must be filed under Chapter 55D of the General Statutes.

16 (b) A document submitted on behalf of a domestic or foreign limited liability company  
17 must be executed:

- 18 (1) By a manager, director, or executive of the limited liability company;  
19 (2) If the limited liability company has not been formed or if the limited liability  
20 company has never had any members, by an organizer; or  
21 (3) If the limited liability company is in the hands of a receiver, trustee, or other  
22 court-appointed fiduciary, by that fiduciary. (1993, c. 354, s. 1; 1999-189, s.  
23 2.1; 1999-369, s. 3.1; 2000-140, s. 101(t); 2001-358, s. 8(a); 2001-387, ss.  
24 53, 155, 173, 175(a); 2001-413, s. 6; 2009-247, s. 1.)  
25

26 **§ 57C-1-21. Forms.**

27 (a) The Secretary of State may promulgate and furnish on request forms for:

- 28 (1) An application for a certificate of existence;  
29 (2) A foreign limited liability company's application for a certificate of authority  
30 to transact business in this State; and  
31 (3) A foreign limited liability company's application for a certificate of  
32 withdrawal.

33 If the Secretary of State so requires, use of these forms is mandatory.

34 (b) The Secretary of State may promulgate and furnish on request forms for other  
35 documents required or permitted to be filed by this Chapter but their use is not mandatory.  
36 (1993, c. 354, s. 1.)  
37

38 **§ 57C-1-22. Filing, service, and copying fees.**

39 (a) The Secretary of State shall collect the following fees when the documents  
40 described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
41		
42	(1) Articles of organization	\$125.00
43	(2) Application for reserved name	10.00
44	(3) Notice of transfer of reserved name	10.00
45	(4) Application for registered name	10.00
46	(5) Application for renewal of registered name	10.00
47	(6) Limited liability company's statement of change of registered agent 48 or registered office or both	5.00
49	(7) Agent's statement of change of registered office for each affected 50 limited liability company	5.00
51	(8) Agent's statement of resignation	No fee

1	(9) Designation of registered agent or registered office or both	5.00
2	(10) Amendment of articles of organization	50.00
3	(11) Restated articles of organization without amendment of articles	10.00
4	(12) Restated articles of organization with amendment of articles	50.00
5	(12a) Articles of conversion (other than articles of conversion included as	50.00
6	part of another document)	
7	(13) Articles of merger	50.00
8	(14) Articles of dissolution	30.00
9	(15) Cancellation of articles of dissolution	10.00
10	(16) Certificate of administrative dissolution	No fee
11	(16a) Application for reinstatement following administrative dissolution	100.00
12	(17) Certificate of reinstatement	No fee
13	(18) Certificate of judicial dissolution	No fee
14	(19) Application for certificate of authority	250.00
15	(20) Application for amended certificate of authority	50.00
16	(21) Application for certificate of withdrawal	10.00
17	(22) Certificate of revocation of authority to transact business	No fee
18	(23) Articles of correction	10.00
19	(24) Application for certificate of existence or authorization (paper)	15.00
20	(24a) Application for certificate of existence or authorization (electronic)	10.00
21	(25) Annual report	200.00
22	(26) Any other document required or permitted to be filed by this Chapter	10.00
23	(27) Repealed by Session Laws 2001-358, s. 8(c).	

24 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is  
25 served on the Secretary of State under this Chapter. The party to a proceeding causing service  
26 of process is entitled to recover this fee as costs if the party prevails in the proceeding.

27 (c) The Secretary of State shall collect the following fees for copying, comparing, and  
28 certifying a copy of any filed document relating to a domestic or foreign limited liability  
29 company:

- 30 (1) One dollar (\$1.00) a page for copying or comparing a copy to the original;
- 31 and
- 32 (2) Fifteen dollars (\$15.00) for a paper certificate.
- 33 (3) Ten dollars (\$10.00) for an electronic certificate. (1993, c. 354, s. 1;
- 34 1997-456, s. 55.3; 1997-475, s. 5.3; 1997-485, ss. 12, 20; 2001-358, s. 8(c);
- 35 2001-387, ss. 54, 173, 175(a); 2001-413, s. 6; 2002-126, ss. 29A.29,
- 36 29A.30.)

37  
38 **§§ 57C-1-22.1 through 57C-1-22.2:** Repealed by Session Laws 2001-358, s. 8(b), effective  
39 January 1, 2002.

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41 **§§ 57C-1-23 through 57C-1-27:** Repealed by Session Laws 2001-358, s. 8(b), effective  
42 January 1, 2002.

43  
44 **§ 57C-1-28. Certificate of existence.**

45 (a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a  
46 domestic limited liability company or a certificate of authorization for a foreign limited liability  
47 company.

48 (b) A certificate of existence or authorization sets forth:

- 49 (1) The domestic limited liability company's name or the foreign limited liability  
50 company's name used in this State;

- 1 (2) That (i) the domestic limited liability company is duly formed under the law  
2 of this State, the date of its formation, and the period of its duration, or (ii)  
3 that the foreign limited liability company is authorized to transact business  
4 in this State;
- 5 (3) That the articles of organization of a domestic limited liability company or  
6 the certificate of authority of a foreign limited liability company has not  
7 been suspended under G.S. 105-230 for failure to pay a tax or fee or file a  
8 report or return, and that the limited liability company has not been  
9 administratively dissolved for failure to comply with the provisions of this  
10 Chapter;
- 11 (4) That articles of dissolution have not been filed; and
- 12 (5) Other facts of record in the Office of the Secretary of State that may be  
13 requested by the applicant.

14 (c) Subject to any qualification stated in the certificate, a certificate of existence or  
15 authorization issued by the Secretary of State may be relied upon as conclusive evidence that  
16 the domestic or foreign limited liability company is in existence or is authorized to transact  
17 business in this State. (1993, c. 354, s. 1.)

18  
19 **§ 57C-1-29:** Repealed by Session Laws 2001-358, s. 8(b), effective January 1, 2002.  
20

21 Part 3. Secretary of State.

22 **§ 57C-1-30. Powers of the Secretary of State.**

23 The Secretary of State has the power reasonably necessary to perform the duties required by  
24 this Chapter. (1993, c. 354, s. 1.)  
25

26 **§ 57C-1-31. Interrogatories by Secretary of State.**

27 The Secretary of State may propound to any foreign or domestic limited liability company  
28 that the Secretary of State has reason to believe is subject to the provisions of this Chapter, and  
29 to any manager thereof, such written interrogatories as may be reasonably necessary and proper  
30 to enable the Secretary of State to ascertain whether the limited liability company is subject to  
31 the provisions of this Chapter or has complied with all of the provisions of this Chapter  
32 applicable to it. Subject to applicable jurisdictional requirements, the interrogatories shall be  
33 answered within 30 days after the mailing thereof, or within such additional time as shall be  
34 fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be  
35 made in writing and under oath. If the interrogatories are directed to an individual, they shall  
36 be answered by the individual, and if directed to a foreign or domestic limited liability  
37 company, they shall be answered by any manager thereof. The Secretary of State shall certify  
38 to the Attorney General for such action as the Attorney General may deem appropriate, all  
39 interrogatories and answers thereto which disclose a violation of any of the provisions of this  
40 Chapter requiring or permitting action by the Attorney General. (1993, c. 354, s. 1.)  
41

42 **§ 57C-1-32. Penalties imposed upon domestic and foreign limited liability companies for  
43 failure to answer interrogatories.**

44 (a) If a foreign or domestic limited liability company fails or refuses to answer  
45 truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the  
46 Secretary of State in accordance with the provisions of this Chapter, the Secretary of State may  
47 suspend its articles of organization or its certificate of authority to do business in this State.

48 (b) Each manager of a foreign or domestic limited liability company who fails or  
49 refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories  
50 propounded to the manager by the Secretary of State in accordance with the provisions of this

1 Chapter shall be guilty of a Class 1 misdemeanor. (1993, c. 354, s. 1; 1994, Ex. Sess., c. 14, s.  
2 39.)

3  
4 **§ 57C-1-33. Information disclosed by interrogatories.**

5 Interrogatories propounded by the Secretary of State and the answers thereto shall not be  
6 open to public inspection nor shall the Secretary of State disclose any facts or information  
7 obtained therefrom except insofar as the Secretary of State's official duty may require the same  
8 to be made public or in the event the interrogatories or the answers thereto are required for  
9 evidence in any criminal proceedings or in any other action or proceedings by this State. (1993,  
10 c. 354, s. 1.)

11  
12 Article 2.

13 Purposes, Powers, Formation, Annual Report, Name, Registered Office, and Agent.

14 Part 1. Purposes and Powers.

15 **§ 57C-2-01. Purposes.**

16 (a) Every limited liability company formed under this Chapter has the purpose of  
17 engaging in any lawful business unless a more limited lawful purpose is set forth in its articles  
18 of organization.

19 (b) A domestic or foreign limited liability company engaging in a business that is  
20 subject to regulation under another statute of this State may be formed or authorized to transact  
21 business under this Chapter only if permitted by and subject to all limitations of the other  
22 statute giving effect to subsection (c) of this section.

23 (c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as  
24 set forth in this subsection, a domestic or foreign limited liability company shall engage in  
25 rendering professional services only to the extent that a professional corporation acting  
26 pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55  
27 of the General Statutes may engage in rendering professional services under the conditions and  
28 limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and  
29 each applicable licensing statute are deemed amended to provide that professionals licensed  
30 under the applicable licensing statute may render professional services through a domestic or  
31 foreign limited liability company. For purposes of applying the provisions, conditions, and  
32 limitations of Chapter 55B of the General Statutes and the applicable licensing statute to  
33 domestic and foreign limited liability companies that engage in rendering professional services,  
34 (i) unless the context clearly requires otherwise, references to Chapter 55 of the General  
35 Statutes (the North Carolina Business Corporation Act) shall be treated as references to this  
36 Chapter, and references to a "corporation" or "foreign corporation" shall be treated as  
37 references to a limited liability company or foreign limited liability company, respectively, (ii)  
38 members shall be treated in the same manner as shareholders of a professional corporation, (iii)  
39 managers and directors shall be treated in the same manner as directors of a professional  
40 corporation, (iv) the persons signing the articles of organization of a limited liability company  
41 shall be treated in the same manner as the incorporators of a professional corporation, and (v)  
42 the name of a domestic or foreign limited liability company so engaged shall comply with  
43 Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word  
44 "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection,  
45 "applicable licensing statute" shall mean those provisions of the General Statutes referred to in  
46 G.S. 55B-2(6).

47 Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the  
48 law in this State applicable to the professional relationship and liabilities between the  
49 individual furnishing the professional services and the person receiving the professional  
50 services, the standards of professional conduct applicable to the rendering of the services, or  
51 any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A

1 member, manager, director, or executive of a professional limited liability company is not  
2 individually liable, directly or indirectly, including by indemnification, contribution,  
3 assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the  
4 professional limited liability company that arise from errors, omissions, negligence,  
5 malpractice, incompetence, or malfeasance committed by another member, manager, director,  
6 executive, employee, agent, or other representative of the professional limited liability  
7 company; provided, however, nothing in this Chapter shall affect the liability of a member,  
8 manager, director, or executive of a professional limited liability company for his or her own  
9 errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the  
10 rendering of professional services.

11 (d) L3C. – Formation and operation of a limited liability company as a low-profit  
12 limited liability company is a lawful purpose. A low-profit limited liability company is a  
13 limited liability company whose articles of organization state that the company is formed for  
14 both a business purpose and a charitable purpose that requires operation of the company in  
15 accordance with the requirements of this subsection. A company that operates in accordance  
16 with these requirements is considered a for-profit entity and not a charitable entity for all tax  
17 purposes. A company's failure to operate in accordance with these requirements does not affect  
18 its status as a limited liability company. The charitable purpose requirements are as follows:

- 19 (1) To accomplish one or more charitable or educational purposes within the  
20 meaning of section 170(c)(2)(B) of the Code, as defined in G.S. 105-228.90.
- 21 (2) To operate so that no significant purpose of the company is the production of  
22 income or the appreciation of property. The fact that a company produces  
23 significant income or capital appreciation is not, in the absence of other  
24 factors, conclusive evidence of a significant purpose to produce income or  
25 accumulate capital.
- 26 (3) To operate so that no purpose of the company is to accomplish one or more  
27 political or legislative purposes within the meaning of section 170(c)(2)(D)  
28 of the Code, as defined in G.S. 105-228.90. (1993, c. 354, s. 1; 1995, c. 351,  
29 s. 21; 1999-362, s. 3; 2001-358, s. 26; 2001-387, ss. 55, 173, 175(a);  
30 2001-413, s. 6; 2010-187, s. 1.)

### 31 32 **§ 57C-2-02. Powers of the limited liability company.**

33 Unless its articles of organization or this Chapter provide otherwise, each limited liability  
34 company has the same powers as an individual to do all things necessary or convenient to carry  
35 out its business and affairs, including, without limitation, power:

- 36 (1) To sue and be sued, complain, and defend in its own name;
- 37 (2) To make and amend operating agreements, not inconsistent with its articles  
38 of organization or with the laws of this State, for managing the business and  
39 regulating the affairs of the limited liability company;
- 40 (3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve,  
41 use, and otherwise deal with, real or personal property, or any legal or  
42 equitable interest in property, wherever located;
- 43 (4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of  
44 all or any part of its property;
- 45 (5) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote,  
46 use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and  
47 with shares or other interests in, or obligations of, any other entity;
- 48 (6) To make contracts and guarantees, incur liabilities, borrow money, issue its  
49 notes, bonds, and other obligations (which may be convertible into or  
50 include the option to purchase other interests in the limited liability

1 company), and secure any of its obligations by mortgage or pledge of any of  
2 its property, franchises, or income;

- 3 (7) To lend money, invest and reinvest its funds, and receive and hold real and  
4 personal property as security for repayment;
- 5 (8) To be a promoter, partner, member, associate, or manager of any  
6 partnership, joint venture, trust, or other entity;
- 7 (9) To conduct its business, locate offices, and exercise the powers granted by  
8 this Chapter within or without this State;
- 9 (10) To elect or appoint managers, directors, executives, officers, employees, and  
10 agents of the limited liability company, define their duties, fix their  
11 compensation, and lend them money and credit;
- 12 (11) To pay pensions and establish pension plans, pension trusts, profit-sharing  
13 plans, and other benefit or incentive plans for any or all of its current or  
14 former managers, directors, executives, officers, employees, and agents;
- 15 (12) To make donations for the public welfare or for charitable, religious,  
16 cultural, scientific, or educational purposes;
- 17 (13) To transact any lawful business that will aid governmental policy;
- 18 (14) To make payments or donations, or do any other act, not inconsistent with  
19 law, that furthers the business and affairs of the limited liability company;
- 20 (15) To provide insurance for its benefit on the life or physical or mental ability  
21 of any of its managers, directors, executives, officers, or employees or on the  
22 life or physical or mental ability of any owner of any interest in the limited  
23 liability company for the purpose of acquiring the interest owned by him at  
24 the time of his death or disability, and for these purposes the limited liability  
25 company is deemed to have an insurable interest in its managers, directors,  
26 executives, officers, employees, or members and other interest owners; and  
27 to provide insurance for its benefit on the life or physical or mental ability of  
28 any other person in whom it has an insurable interest; and
- 29 (16) To render professional services, subject to G.S. 57C-2-01(c). (1993, c. 354,  
30 s. 1; 2001-387, s. 56.)  
31

32 **§§ 57C-2-03 through 57C-2-19. Reserved for future codification purposes.**  
33

34 Part 2. Formation; Articles of Organization; Amendment of Articles; Annual Report.

35 **§ 57C-2-20. Formation.**

36 (a) One or more persons may form a limited liability company by delivering executed  
37 articles of organization to the Secretary of State for filing. A limited liability company may also  
38 be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of  
39 this Chapter.

40 (b) (1) When the filing by the Secretary of State of the articles of organization  
41 becomes effective, the proposed organization becomes a limited liability  
42 company subject to this Chapter and to the purposes, conditions, and  
43 provisions stated in the articles of organization.

44 (2) Filing of the articles of organization by the Secretary of State is conclusive  
45 evidence of the formation of the limited liability company, except in a  
46 proceeding by the State to cancel or revoke the articles of organization or  
47 involuntarily dissolve the limited liability company.

48 (c) Organization of a limited liability company requires one or more initial members  
49 and any further action as may be determined by the initial member or members. If initial  
50 members are not identified in the articles of organization of a limited liability company in the  
51 manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more meetings at the

1 call of a majority of the organizers to identify the initial members of the limited liability  
2 company. Unless otherwise provided in this Chapter or in the articles of organization of the  
3 limited liability company, all decisions to be made by the organizers at such meetings shall  
4 require the approval, consent, agreement, or ratification of a majority of the organizers. Unless  
5 otherwise provided in the articles of organization, the organizers may, in lieu of a meeting, take  
6 action as described in this subsection by written consent signed by all of the organizers. The  
7 written consent may be incorporated in, or otherwise made part of, the initial written operating  
8 agreement of the limited liability company. (1993, c. 354, s. 1; 1997-485, s. 28; 1999-189, s.  
9 2.2; 1999-369, s. 3.4; 1999-456, s. 50; 2000-140, ss. 10(a), 10(b); 2001-387, s. 57.)

10  
11 **§ 57C-2-21. Articles of organization.**

12 (a) The articles of organization must set forth all of the following:

- 13 (1) A name for the limited liability company that satisfies the provisions of G.S.  
14 55D-20 and G.S. 55D-21.
- 15 (2) If the limited liability company is to dissolve by a specific date, the latest  
16 date on which the limited liability company is to dissolve. If no date for  
17 dissolution is specified, there shall be no limit on the duration of the limited  
18 liability company.
- 19 (3) The name and address of each person executing the articles of organization  
20 and whether the person is executing the articles of organization in the  
21 capacity of a member or an organizer.
- 22 (4) The street address, and the mailing address if different from the street  
23 address, of the limited liability company's initial registered office, the county  
24 in which the initial registered office is located, and the name of the limited  
25 liability company's initial registered agent at that address.
- 26 (4a) The street address, and the mailing address if different from the street  
27 address, of the limited liability company's principal office, if any, and the  
28 county in which the principal office, if any, is located.
- 29 (5) Unless all of the members by virtue of their status as members shall be  
30 managers of the limited liability company, a statement that, except as  
31 provided in G.S. 57C-3-20(a), the members shall not be managers by virtue  
32 of their status as members.
- 33 (6) If the limited liability company is formed as a low-profit limited liability  
34 company, a statement that operation of the company must meet the  
35 charitable purpose requirements of G.S. 57C-2-01(d).

36 (b) The articles of organization may set forth any other provision, not inconsistent with  
37 law, including any other matter that under this Chapter is permitted to be set forth in an  
38 operating agreement.

39 (c) The articles of organization need not set forth any of the powers enumerated in this  
40 Chapter. (1993, c. 354, s. 1; 1999-189, s. 2.3; 2000-140, s. 101(t); 2001-358, s. 27; 2001-387,  
41 ss. 58, 173, 175(a); 2001-413, s. 6; 2010-187, s. 2.)

42  
43 **§ 57C-2-22. Amendment of articles of organization.**

44 (a) The articles of organization shall be amended when:

- 45 (1) There is a change in the name of the limited liability company;
- 46 (2) There is a false or erroneous statement in the articles of organization;
- 47 (3) There is a change in the time as stated in the articles of organization for the  
48 dissolution of the limited liability company; or
- 49 (4) The members desire to make a change in the articles of organization.

50 (b) Unless otherwise provided in the articles of organization or a written operating  
51 agreement, any amendment to the articles of organization shall require the unanimous vote of

1 the members or, if no initial members of the limited liability company have been identified in  
2 the manner provided in this Chapter, by the unanimous vote of the organizers. (1993, c. 354, s.  
3 1; 1999-189, s. 2.4; 2000-140, s. 101(t).)

4  
5 **§ 57C-2-22.1. Restated articles of organization.**

6 (a) A limited liability company may restate its articles of organization at any time with  
7 or without member action.

8 (b) The restated articles of organization may include one or more amendments to the  
9 articles of organization. Unless otherwise provided in the articles of organization or a written  
10 operating agreement, any amendment requires the unanimous vote of the members or, if no  
11 initial members of the limited liability company have been identified in the manner provided in  
12 this Chapter, by the unanimous vote of the organizers. The restated articles of organization may  
13 include a statement of the address of the current registered office and the name of the current  
14 registered agent of the limited liability company.

15 (c) A limited liability company restating its articles of organization shall deliver to the  
16 Secretary of State for filing articles of restatement that:

- 17 (1) Set forth the name of the limited liability company.
- 18 (2) Attach as an exhibit thereto the text of the restated articles of organization.
- 19 (3) State that the restated articles of organization do not contain an amendment  
20 or, if the articles do contain an amendment, that there is an amendment that  
21 was approved as required by this Chapter.

22 (d) Duly adopted restated articles of organization supersede the original articles of  
23 organization and all amendments to them.

24 (e) The Secretary of State may certify restated articles of organization as the articles of  
25 organization currently in effect, without including the other information required by subsection  
26 (c) of this section. (1997-485, s. 18; 1999-189, s. 2.5; 2000-140, s. 101(t).)

27  
28 **§ 57C-2-23. Annual report for Secretary of State.**

29 (a) Requirement and Content. – Each domestic limited liability company other than a  
30 professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited  
31 liability company authorized to transact business in this State must file an annual report with  
32 the Secretary of State on a form prescribed by the Secretary and in the manner required by the  
33 Secretary. The annual report must specify the year to which the report applies and must set out  
34 the information listed in this subsection. The information must be current as of the date the  
35 company completes the report. If the information in the company's most recent annual report  
36 has not changed, the company may certify on its annual report that the information has not  
37 changed in lieu of restating the information.

38 The following information must be included on an annual report of a limited liability  
39 company:

- 40 (1) The name of the limited liability or foreign limited liability company and the  
41 state or country under whose law it is formed.
- 42 (2) The street address, and the mailing address if different from the street  
43 address, of the registered office, the county in which the registered office is  
44 located, and the name of its registered agent at that office in this State, and a  
45 statement of any change of the registered office or registered agent, or both.
- 46 (3) The address and telephone number of its principal office.
- 47 (4) The names and business addresses of its managers or, if the limited liability  
48 company has never had members, its organizers.
- 49 (5) A brief description of the nature of its business.

50 (b) Repealed by Session Laws 2010-31, s. 31.4(b), effective June 30, 2010.

1 (c) Notice and Due Date. – The Secretary of State must notify limited liability  
2 companies of the annual report filing requirement. The first annual report of a limited liability  
3 company is due by April 15th of the year following the calendar year in which the company  
4 files its articles of organization with the Secretary of State. Each subsequent annual report is  
5 due by April 15.

6 (d) Incomplete Report. – If an annual report does not contain the information required  
7 by this section, the Secretary of State shall promptly notify the reporting domestic or foreign  
8 limited liability company in writing and return the report to it for correction. If the report is  
9 corrected to contain the information required by this section and delivered to the Secretary of  
10 State within 30 days after the effective date of notice, it is deemed to be timely filed.

11 (e) Amendments. – Amendments to any previously filed annual report may be filed  
12 with the Secretary of State at any time for the purpose of correcting, updating, or augmenting  
13 the information contained in the annual report. (1993, c. 354, s. 1; 1997-475, s. 6.7; 2001-387,  
14 ss. 59, 59A; 2010-31, s. 31.4(b).)

15  
16 **§§ 57C-2-24 through 57C-2-29. Reserved for future codification purposes.**

17  
18 **§ 57C-2-30 through 57C-2-34:** Repealed by Session Laws 2001-358, s. 30, effective January  
19 1, 2002.

20  
21 **§§ 57C-2-35 through 57C-2-39:** Reserved for future codification purposes.

22  
23 Part 4. Registered Office and Registered Agent.

24 **§ 57C-2-40. Registered office and registered agent.**

25 Each limited liability company must maintain a registered office and registered agent as  
26 required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the  
27 Secretary of State under that Article. (1993, c. 354, s. 1; 2000-140, s. 101(g); 2001-358, s.  
28 49(a); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

29  
30 **§§ 57C-2-41 through 57C-2-42:** Repealed by Session Laws 2001-358, s. 49, effective January  
31 1, 2002.

32  
33 **§ 57C-2-43. Service on limited liability company.**

34 (a) A limited liability company's registered agent is an agent of the limited liability  
35 company for service of process, notice, or demand required or permitted by law to be served on  
36 the limited liability company.

37 (b) Whenever a limited liability company shall fail to appoint or maintain a registered  
38 agent in this State, or whenever its registered agent cannot with due diligence be found at the  
39 registered office, then the Secretary of State shall be an agent of the limited liability company  
40 upon whom any process, notice, or demand may be served. Service on the Secretary of State of  
41 any such process, notice, or demand shall be made by delivering to and leaving with the  
42 Secretary of State or with any clerk authorized by the Secretary of State to accept service of  
43 process, duplicate copies of the process, notice, or demand and the fee required by G.S.  
44 57C-1-22(b). In the event any such process, notice, or demand is served on the Secretary of  
45 State in the manner provided for in this section, the Secretary of State shall immediately mail  
46 one of the copies thereof, by registered or certified mail, return receipt requested, to the limited  
47 liability company at its principal office or, if there is no mailing address for the principal office  
48 on file, to the limited liability company at its registered office. Service on a limited liability  
49 company under this subsection shall be effective for all purposes from and after the date of the  
50 service on the Secretary of State.

1 (c) The Secretary of State shall keep a record of all processes, notices, and demands  
2 served upon the Secretary of State under this section and shall record therein the time of the  
3 service and his action with reference thereto.

4 (d) Nothing herein contained shall limit or affect the right to serve any process, notice,  
5 or demand required or permitted by law to be served upon a limited liability company in any  
6 other manner now or hereafter permitted by law. (1993, c. 354, s. 1; 2000-140, s. 49.)  
7

### 8 Article 3.

#### 9 Membership and Management.

##### 10 Part 1. Membership.

###### 11 **§ 57C-3-01. Admission of members.**

12 (a) Unless the articles of organization of a limited liability company provide otherwise,  
13 each person executing the articles of organization of a limited liability company in the capacity  
14 of a member, and each person who is otherwise named in the articles of organization as a  
15 member of the limited liability company, becomes a member at the time that the filing by the  
16 Secretary of State of the articles of organization of the limited liability company becomes  
17 effective.

18 (b) A person may be admitted as a member of a limited liability company:

- 19 (1) In the case of a person acquiring a membership interest from the limited  
20 liability company, (i) upon being so identified as a member by the organizers  
21 of the limited liability company in accordance with G.S. 57C-2-20(c), (ii) as  
22 provided in the articles of organization or operating agreement or, if the  
23 articles of organization or operating agreement do not so provide, upon the  
24 unanimous consent of the members, or (iii) upon being designated or  
25 otherwise appointed as a member under G.S. 57C-6-01(4);
- 26 (2) In the case of an assignee or other person having only the rights of an  
27 assignee under G.S. 57C-5-02 with respect to an interest of a member in a  
28 limited liability company, as provided in G.S. 57C-5-04(a); and
- 29 (3) In connection with a business entity converting or merging into the limited  
30 liability company under Part 1 or Part 2 of Article 9A of this Chapter.

31 (c) Nothing in this Chapter precludes a person from being a member of a limited  
32 liability company because that person has not made, and has no obligation to make, any  
33 contributions to the limited liability company and has no right to receive any distributions from  
34 the limited liability company or share in any profits or losses of the limited liability company.  
35 (1993, c. 354, s. 1; 1999-189, s. 4.1; 2000-140, s. 101(t); 2001-387, s. 64; 2009-247, s. 2.)  
36

###### 37 **§ 57C-3-02. Cessation of membership.**

38 Unless otherwise provided in this Chapter, the articles of organization, or a written  
39 operating agreement, a person who has ceased to be a member shall have only the rights of an  
40 assignee as provided in G.S. 57C-5-02, but shall not be released from his liability to the limited  
41 liability company under G.S. 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability  
42 upon wrongful distribution). A person ceases to be a member of a limited liability company  
43 upon the happening of any of the following events of withdrawal:

- 44 (1) The person's voluntary withdrawal from the limited liability company as  
45 provided in G.S. 57C-5-06;
- 46 (2) The person's removal as a member in accordance with the articles of  
47 organization or an operating agreement;
- 48 (3) Unless otherwise provided in the articles of organization or a written  
49 operating agreement or with the consent of all other members, the person's:
  - 50 a. Making an assignment for the benefit of creditors;
  - 51 b. Filing a voluntary petition in bankruptcy;

- 1 c. Being adjudged bankrupt or insolvent or having entered against him  
2 an order for relief in any bankruptcy or insolvency proceeding;
- 3 d. Filing a petition or answer seeking for him any reorganization,  
4 arrangement, composition, readjustment, liquidation, dissolution, or  
5 similar relief under any statute, law, or regulation;
- 6 e. Seeking, consenting to, or acquiescing in, the appointment of a  
7 trustee or receiver for, or liquidation of the person or of all or any  
8 substantial part of that person's properties; or
- 9 f. Filing an answer or other pleading admitting or failing to contest the  
10 material allegations of a petition filed against the person in any  
11 proceeding described in this subdivision;
- 12 (4) Unless otherwise provided in the articles of organization or a written  
13 operating agreement or with the consent of all other members, the  
14 continuation of any proceeding against the person seeking reorganization,  
15 arrangement, composition, readjustment, liquidation, dissolution, or similar  
16 relief under any statute, law, or regulation, for 120 days after the  
17 commencement thereof or the appointment of a trustee, receiver, or  
18 liquidator for the person or all or any substantial part of the person's  
19 properties without the person's agreement or acquiescence, which  
20 appointment is not vacated or stayed for 120 days or, if the appointment is  
21 stayed, for 120 days after the expiration of the stay during which period the  
22 appointment is not vacated;
- 23 (5) Unless otherwise provided in the articles of organization or a written  
24 operating agreement or with the consent of all other members, in the case of  
25 a member who is an individual, the individual's:
- 26 a. Death; or
- 27 b. Adjudication by a court of competent jurisdiction as incompetent to  
28 manage his person or property;
- 29 (6) Unless otherwise provided in the articles of organization or a written  
30 operating agreement or with the consent of all other members, in the case of  
31 a member who is acting as a member by virtue of being a trustee of a trust,  
32 the termination of the trust (but not merely the substitution of a new trustee);
- 33 (7) Unless otherwise provided in the articles of organization or a written  
34 operating agreement or with the consent of all other members, in the case of  
35 a member that is a domestic or foreign partnership, a domestic or foreign  
36 limited partnership, or another domestic or foreign limited liability company,  
37 the dissolution and commencement of winding up of the partnership, limited  
38 partnership, or limited liability company;
- 39 (8) Unless otherwise provided in the articles of organization or a written  
40 operating agreement or with the consent of all other members, in the case of  
41 a member that is a domestic or foreign corporation, the dissolution of the  
42 corporation or the revocation of its charter; or
- 43 (9) Unless otherwise provided in the articles of organization or a written  
44 operating agreement or with the consent of all other members, in the case of  
45 a member that is an estate, the distribution by the fiduciary of the estate's  
46 entire interest in the limited liability company. (1993, c. 354, s. 1; 1995, c.  
47 351, ss. 5, 6; 2001-387, s. 65.)
- 48

49 **§ 57C-3-03. Voting of members.**

50 Except as provided in the articles of organization or a written operating agreement, the  
51 affirmative vote, approval, agreement, or consent of all members shall be required to:

- 1 (1) Adopt or amend an operating agreement;
- 2 (2) Admit any person as a member;
- 3 (3) Sell, transfer, or otherwise dispose of all or substantially all of the assets of
- 4 the limited liability company prior to the dissolution of the limited liability
- 5 company.
- 6 (4) Repealed by Session Laws 1999-456, s. 51. (1993, c. 354, s. 1; 1999-456, s.
- 7 51.)

8  
9 **§ 57C-3-04. Members' access to information; records.**

10 (a) Each member has the right, subject to such reasonable standards (including  
11 standards governing what information and documents are to be furnished, at what time and  
12 location and at whose expense) as may be set forth in the articles of organization or a written  
13 operating agreement, to obtain from the limited liability company from time to time upon  
14 reasonable demand for any purpose reasonably related to the member's interest as a member:

- 15 (1) Information regarding the status of the business and the financial condition
- 16 of the limited liability company;
- 17 (2) Promptly after becoming available, a copy of the limited liability company's
- 18 federal, State, and local income tax returns for each year;
- 19 (3) A current list of the name and last known business, residence, or mailing
- 20 address of each member;
- 21 (4) A copy of the articles of organization and any written operating agreement
- 22 and all amendments thereto, together with copies of any written powers of
- 23 attorney pursuant to which the articles of organization, operating agreement,
- 24 and all amendments thereto have been executed;
- 25 (5) Information regarding the amount of cash and a description and statement of
- 26 the agreed value of any other property or services contributed by each
- 27 member, and the property and services that each member has agreed to
- 28 contribute in the future, and the date on which each became a member; and
- 29 (6) Such other information regarding the affairs of the limited liability company
- 30 as is just and reasonable.

31 (b) A limited liability company may maintain its records in other than written form if  
32 the form is capable of conversion into written form within a reasonable time.

33 (c) Any demand under this section shall (i) be in writing, (ii) be made in good faith and  
34 for a proper purpose, and (iii) describe with reasonable particularity the purpose and the records  
35 or information desired.

36 (d) Failure of the limited liability company to keep or maintain any of the records or  
37 information required pursuant to this section shall not be grounds for imposing liability on any  
38 person for the debts and obligations of the limited liability company.

39 (e) The managers shall have the right to keep confidential from members who are not  
40 managers, for such period of time as the managers deem reasonable, any information which the  
41 managers reasonably believe to be in the nature of trade secrets or other information the  
42 disclosure of which the managers in good faith believe is not in the best interest of the limited  
43 liability company. The authority authorized in this subsection may be vested in directors  
44 instead of managers to the extent provided in the articles of organization or a written operating  
45 agreement. (1993, c. 354, s. 1; 2001-387, s. 66; 2001-487, s. 62(i).)

46  
47 **§ 57C-3-05. Members bound by operating agreements.**

48 A member shall be bound by any operating agreement, including any amendment thereto,  
49 otherwise valid under this Chapter and other applicable law, (i) to which the member has  
50 expressly assented, or (ii) which was in effect at the time the member became a member and  
51 either was in writing or the terms of which were actually known to the member, or (iii) with

1 respect to any amendment, if the member was bound by the operating agreement as in effect  
2 immediately prior to such amendment and such amendment was adopted in accordance with  
3 the terms of such operating agreement. The articles of organization or written operating  
4 agreement may require that all agreements of the members constituting the operating agreement  
5 be in writing, in which case the term "operating agreement" shall not include oral agreements  
6 of the members. Except to the extent otherwise provided in a written operating agreement, a  
7 limited liability company shall be deemed for all purposes to be a party to the operating  
8 agreement of its member or members. (1993, c. 354, s. 1; 1999-189, s. 4.2; 2000-140, s.  
9 101(t).)

10  
11 **§§ 57C-3-06 through 57C-3-19. Reserved for future codification purposes.**

12  
13 **Part 2. Managers.**

14 **§ 57C-3-20. Determination of managers; management.**

15 (a) Unless the articles of organization provide otherwise, all members by virtue of their  
16 status as members shall be managers of the limited liability company, together with any other  
17 persons that may be designated as managers in, or in accordance with, the articles of  
18 organization or a written operating agreement. If the articles of organization provide that all  
19 members are not necessarily managers by virtue of their status as members, then those persons  
20 designated as managers in, or in accordance with, the articles of organization or a written  
21 operating agreement shall be managers, but for any period during which no such designation  
22 has been made or is in effect, all members shall be managers.

23 (b) Except to the extent otherwise provided in the articles of organization or a written  
24 operating agreement, management of the affairs of the limited liability company shall be vested  
25 in the managers. Subject to any provisions in the articles of organization or a written operating  
26 agreement or this Chapter restricting, enlarging, or modifying the management rights and duties  
27 of any manager or managers, or management procedures, each manager shall have equal rights  
28 and authority to participate in the management of the limited liability company, and  
29 management decisions shall require the approval, consent, agreement, or ratification of a  
30 majority of the managers. (1993, c. 354, s. 1; 1999-189, s. 4.3; 2000-140, s. 101(t); 2001-387, s.  
31 67.)

32  
33 **§ 57C-3-21. Qualification, designation, and removal of managers.**

34 Subject to G.S. 57C-3-20(a), the articles of organization or a written operating agreement  
35 may set forth the number and qualification of managers and the manner in which they are to be  
36 designated, removed, and replaced. Unless otherwise provided in the articles of organization, a  
37 written operating agreement, or this Chapter:

- 38 (1) Managers need not be members and, unless otherwise required by G.S.  
39 57C-3-20(a), members need not be managers;
- 40 (2) Designation of managers (other than those managers who are such by virtue  
41 of their status as members) shall be evidenced in a written operating  
42 agreement, as amended from time to time;
- 43 (3) Upon designation as manager and the person's consent to such designation,  
44 the designated person shall serve as manager until the earliest to occur of (i)  
45 the person's resignation, (ii) any event described in G.S. 57C-3-02 with  
46 respect to the manager, (iii) any event specified in the articles of  
47 organization or written operating agreement that results in a manager ceasing  
48 to be a manager, or (iv) in the case of a person designated as a manager in a  
49 written operating agreement, the amendment of the written operating  
50 agreement removing the person's designation as a manager. (1993, c. 354, s.  
51 1; 1995, c. 351, s. 7; 2001-487, s. 62(j).)

1  
2 **§ 57C-3-22. Duties of managers.**

3 (a) The provisions of this section are all subject to G.S. 57C-3-30.

4 (b) A manager shall discharge his duties as manager in good faith, with the care an  
5 ordinary prudent person in a like position would exercise under similar circumstances, and in  
6 the manner the manager reasonably believes to be in the best interests of the limited liability  
7 company. In discharging his duties, a manager is entitled to rely on information, opinions,  
8 reports, or statements, including, but not limited to, financial statements or other financial data,  
9 if prepared or presented by:

10 (1) One or more employees of the limited liability company whom the manager  
11 reasonably believes to be reliable and competent in the matters presented;

12 (2) Legal counsel, certified public accountants, or other persons on matters the  
13 manager reasonably believes are within the person's professional or expert  
14 competence; or

15 (3) A committee of managers of which the manager is not a member if the  
16 manager reasonably believes the committee merits confidence.

17 (c) A manager is not acting in good faith if the manager has actual knowledge  
18 concerning the matter in question that makes reliance otherwise permitted by subsection (b) of  
19 this section unwarranted.

20 (d) A manager is not liable for any action taken as a manager, or any failure to take any  
21 action, if the manager performs the duties of his office in compliance with this section.

22 (e) Except as otherwise provided in the articles of organization or a written operating  
23 agreement, every manager must account to the limited liability company and hold as trustee for  
24 it any profit or benefit derived without the informed consent of the members by the manager  
25 from any transaction connected with the formation, conduct, or liquidation of the limited  
26 liability company or from any personal use by the manager of its property.

27 (f) Except to the extent otherwise provided in the articles of organization or a written  
28 operating agreement, each director and executive shall be subject to the same requirements and  
29 afforded the same rights as are provided in this section for a manager when the director or  
30 executive exercises authority in the management of a limited liability company's affairs that  
31 would otherwise be vested in the managers pursuant to G.S. 57C-3-20(b). (1993, c. 354, s. 1;  
32 2001-387, s. 68.)  
33

34 **§ 57C-3-23. Agency power of managers.**

35 Every manager is an agent of the limited liability company for the purpose of its business,  
36 and the act of every manager, including execution in the name of the limited liability company  
37 of any instrument, for apparently carrying on in the usual way the business of the limited  
38 liability company of which he is a manager, binds the limited liability company, unless the  
39 manager so acting has in fact no authority to act for the limited liability company in the  
40 particular matter and the person with whom the manager is dealing has knowledge of the fact  
41 that the manager has no authority. An act of a manager that is not apparently for carrying on the  
42 usual course of the business of the limited liability company does not bind the limited liability  
43 company unless authorized in fact or ratified by the limited liability company. (1993, c. 354, s.  
44 1; 2001-487, s. 62(l).)  
45

46 **§ 57C-3-24. Delegation of authority of managers.**

47 (a) The authority of a manager or the managers to act on behalf of the limited liability  
48 company may be delegated by such manager or the managers to persons other than managers if  
49 and to the extent a written operating agreement so provides. The delegation of authority may be  
50 general or limited to specific matters. The act of any such person within the scope of the  
51 authority so delegated shall be as effective to bind the limited liability company as would the

1 act of such manager or the managers, unless the delegation has been revoked and the person  
2 with whom such person is dealing has actual knowledge of the fact that the delegation has been  
3 revoked.

4 (b) The creation of, delegation of authority to, or action by a manager's delegate does  
5 not alone constitute compliance by a manager with the standards of conduct described in G.S.  
6 57C-3-22.

7 (c) Each person acting on behalf of the limited liability company within the scope of  
8 authority delegated by a manager or the managers pursuant to subsection (a) of this section, or  
9 reasonably and in good faith believing himself to be so acting, shall be entitled, with respect to  
10 such acts, to the same limitation on personal liability as is afforded to a manager pursuant to  
11 G.S. 57C-3-30. A limited liability company may, but is not required to, provide persons acting  
12 on behalf of the limited liability company within the scope of the authority delegated by a  
13 manager or the managers pursuant to subsection (a) of this section with the same limitation on  
14 personal liability and rights to indemnification as are, or may be, afforded to managers pursuant  
15 to G.S. 57C-3-31 and G.S. 57C-3-32. (1993, c. 354, s. 1.)  
16

17 **§ 57C-3-25. Identity of managers, authentication of records, and execution of documents.**

18 (a) Any person dealing with a limited liability company or a foreign limited liability  
19 company may rely conclusively upon its most recent annual report and any amendments to it  
20 on file with the Secretary of State as to the identity of its managers, except to the extent the  
21 person has actual knowledge that a person identified therein as a manager is not a manager.

22 (b) The documents, if any, constituting the operating agreement of a limited liability  
23 company or a foreign limited liability company authorized to transact business in this State, and  
24 records of the actions of its members, managers, directors, or executives may be authenticated  
25 by any manager of the domestic or foreign limited liability company. Any person dealing with  
26 the domestic or foreign limited liability company may rely conclusively upon the certificate or  
27 written statement of a manager authenticating the documents and records except to the extent  
28 the person has actual knowledge that the certificate or written statement is false.

29 (c) Any document or instrument required or permitted by law to be filed, registered, or  
30 recorded with any public authority and to be executed by a limited liability company or a  
31 foreign limited liability company authorized to transact business in this State shall be  
32 sufficiently executed for such purpose if signed on its behalf by one of its managers. (1993, c.  
33 354, s. 1; 1997-475, s. 6.8; 2001-487, s. 62(m).)  
34

35 **§§ 57C-3-26 through 57C-3-29. Reserved for future codification purposes.**  
36

37 Part 3. Liability.

38 **§ 57C-3-30. Liability to third parties of members, managers, directors, and executives;  
39 parties to actions; governing law.**

40 (a) A person who is a member, manager, director, executive, or any combination  
41 thereof of a limited liability company is not liable for the obligations of a limited liability  
42 company solely by reason of being a member, manager, director, or executive and does not  
43 become so by participating, in whatever capacity, in the management or control of the business.  
44 A member, manager, director, or executive may, however, become personally liable by reason  
45 of that person's own acts or conduct.

46 (b) A member of a limited liability company is not a proper party to proceedings by or  
47 against a limited liability company, except where the object of the proceeding is to enforce a  
48 member's right against or liability to the limited liability company.

49 (c) The liability of members, managers, directors, and executives of a limited liability  
50 company formed and existing under this Chapter shall at all times be determined solely and  
51 exclusively by this Chapter and the laws of this State.

1 (d) If a conflict arises between the laws of this State and the laws of any other  
2 jurisdiction with regard to the liability of members, managers, directors, or executives of a  
3 limited liability company formed and existing under this Chapter for the debts, obligations, and  
4 liabilities of the limited liability company, this Chapter and the laws of this State shall govern  
5 in determining the liability. (1993, c. 354, s. 1; 2001-387, s. 69.)  
6

7 **§ 57C-3-31. Mandatory indemnification of managers, directors, executives, and**  
8 **members.**

9 (a) Unless otherwise provided in the articles of organization or a written operating  
10 agreement, a limited liability company must indemnify every manager, director, and executive  
11 in respect of payments made and personal liabilities reasonably incurred by the manager,  
12 director, and executive in the authorized conduct of its business or for the preservation of its  
13 business or property.

14 (b) Unless otherwise provided in the articles of organization or a written operating  
15 agreement, a limited liability company shall indemnify a member, manager, director, or  
16 executive who is wholly successful, on the merits or otherwise, in the defense of any  
17 proceeding to which the person was a party because the person is or was a member, manager,  
18 director, or executive of the limited liability company against reasonable expenses incurred by  
19 the person in connection with the proceeding. (1993, c. 354, s. 1; 2001-387, s. 70.)  
20

21 **§ 57C-3-32. Limitation of liability of managers, directors, executives, and members and**  
22 **permissive indemnification of managers, directors, executives, and members;**  
23 **insurance.**

24 (a) Subject to subsection (b) of this section, the articles of organization or a written  
25 operating agreement may:

- 26 (1) Eliminate or limit the personal liability of a manager, director, or executive  
27 for monetary damages for breach of any duty provided for in G.S. 57C-3-22  
28 (other than liability under G.S. 57C-4-07); and
- 29 (2) Provide for indemnification of a manager, member, director, or executive for  
30 judgments, settlements, penalties, fines, or expenses incurred in a proceeding  
31 to which the member, manager, director, or executive is a party because the  
32 person is or was a manager, member, director, or executive. For purposes of  
33 this subdivision, the words "expenses", "proceeding", and "party" shall have  
34 the meanings set forth in G.S. 55-8-50(b).

35 (b) No provision permitted under subsection (a) of this section shall limit, eliminate, or  
36 indemnify against the liability of a manager, director, or executive for (i) acts or omissions that  
37 the manager, director, or executive knew at the time of the acts or omissions were clearly in  
38 conflict with the interests of the limited liability company, (ii) any transaction from which the  
39 manager, director, or executive derived an improper personal benefit, or (iii) acts or omissions  
40 occurring prior to the date the provision became effective, except that indemnification pursuant  
41 to subdivision (2) of subsection (a) of this section may be provided if approved by all the  
42 members. As used in this subsection, "improper personal benefit" does not include reasonable  
43 compensation or other reasonable incidental benefit for or on account of service as a manager,  
44 director, executive, officer, employee, independent contractor, attorney, or consultant of the  
45 limited liability company.

46 (c) A limited liability company may purchase and maintain insurance on behalf of an  
47 individual who is or was a manager, director, executive, officer, employee, or agent of the  
48 limited liability company, or who, while a manager, director, executive, officer, employee, or  
49 agent of the limited liability company is or was serving at the request of the limited liability  
50 company as a director, executive, officer, partner, member, manager, trustee, employee, or  
51 agent of a person, against liability asserted against or incurred by the person in that capacity or

1 arising from the person's status as a manager, director, executive, officer, employee, or agent,  
2 whether or not the limited liability company would have the power to indemnify the person  
3 against the same liability under any provision of this Chapter. (1993, c. 354, s. 1; 1995, c. 351,  
4 ss. 8, 9; 1999-189, s. 4.4; 2000-140, s. 101(t); 2001-387, s. 71.)

5  
6 Article 4.  
7 Finance.

8 **§ 57C-4-01. Contributions to capital.**

9 The contribution of a member may be in the form of any tangible or intangible property or  
10 benefit to the limited liability company that a person contributes in cash, property, services  
11 rendered, promissory notes, or other binding obligation to contribute cash or property or to  
12 render services. Except as provided in an operating agreement, in the case of noncash  
13 contributions, the value of the contribution to the limited liability company shall be the fair  
14 market value of the contribution on the date it is made, as agreed to by the limited liability  
15 company and the contributor. (1993, c. 354, s. 1.)

16  
17 **§ 57C-4-02. Liability for contribution.**

18 (a) A promise by a member to contribute to the limited liability company is not  
19 enforceable unless set out in a writing signed by the member.

20 (b) Except as provided in an operating agreement, a member is obligated to the limited  
21 liability company to perform any enforceable promises to contribute cash or property or to  
22 render services, even if the member is unable to perform because of death, disability, or any  
23 other reason. If a member does not make the required contribution of property or services, the  
24 member (or the member's estate or personal representative) is obligated, at the option of the  
25 limited liability company, to contribute cash equal to that portion of the value of the stated  
26 contribution that has not been made.

27 (c) Unless otherwise provided in the operating agreement, the obligation of a member  
28 to make a contribution or to return money or other property paid or distributed in violation of  
29 this Chapter may be compromised only with the unanimous consent of the members. Any such  
30 compromise, however, shall not affect the rights of a creditor of a limited liability company to  
31 enforce a claim that arose prior to the date of the compromise. (1993, c. 354, s. 1.)

32  
33 **§ 57C-4-03. Allocation of income, gain, loss, deduction, or credit.**

34 Income, gain, loss, deduction, or credit of a limited liability company shall be allocated  
35 among the members, and among classes of members, in the manner agreed to in an operating  
36 agreement. To the extent an operating agreement does not so provide for the allocation of such  
37 items, income, gain, loss, deduction, or credit shall be allocated among the members in  
38 proportion to the agreed value, as stated in the limited liability company records required to be  
39 kept pursuant to G.S. 57C-3-04(a)(5), of the contributions made by each member, taking into  
40 account variations in the capital contributions of each member during the period for which the  
41 allocations are made using any reasonable method selected by the managers. (1993, c. 354, s.  
42 1.)

43  
44 **§ 57C-4-04. Interim distributions.**

45 Except as provided in this Chapter, a member is entitled to receive distributions from a  
46 limited liability company before the withdrawal of the member from the limited liability  
47 company and before the dissolution and winding up of the limited liability company as  
48 provided in an operating agreement. In the absence of any provision for interim distributions in  
49 an operating agreement, such distributions may be made at such times and in such amounts as  
50 determined by the managers, in proportion to the agreed value, as stated in the limited liability  
51 company records required to be kept pursuant to G.S. 57C-3-04(a)(5), of the contributions

1 made by each member as of the date of such distribution, or as of such date within 90 days  
2 prior to the distribution that may be determined by the managers. (1993, c. 354, s. 1.)

3  
4 **§ 57C-4-05. Distribution in kind.**

5 Except as provided in an operating agreement:

- 6 (1) A member, regardless of the nature of the member's contribution, has no  
7 right to demand or receive any distribution from a limited liability company  
8 in any form other than cash; and  
9 (2) No member may be compelled to accept from a limited liability company a  
10 distribution of any asset in kind unless all persons with interests in the  
11 limited liability company receive at the same time as a distribution an  
12 interest in the property distributed that is proportionate to their interests in  
13 the limited liability company. (1993, c. 354, s. 1.)  
14

15 **§ 57C-4-06. Restrictions on making distributions.**

16 (a) No distribution may be made if, after giving effect to the distribution:

- 17 (1) The limited liability company would not be able to pay its debts as they  
18 become due in the usual course of business; or  
19 (2) The limited liability company's total assets would be less than the sum of its  
20 total liabilities plus, unless the operating agreement provides otherwise, the  
21 amount that would be needed, if the limited liability company were to be  
22 dissolved at the time of the distribution, to satisfy the preferential rights  
23 upon dissolution of members whose preferential rights are superior to the  
24 rights of the member receiving the distribution.

25 (b) The limited liability company may base a determination that a distribution is not  
26 prohibited under subsection (a) of this section on financial statements prepared on the basis of  
27 accounting practices and principles that are reasonable under the circumstances; and for this  
28 purpose may determine asset values based on book values or on a fair market valuation or other  
29 method that is reasonable under the circumstances.

30 (c) Except as provided in subsection (e) of this section, the effect of a distribution under  
31 subsection (a) of this section is measured as of (i) the date the distribution is authorized if the  
32 payment occurs within 120 days after the date of authorization; or (ii) the date payment is made  
33 if it occurs more than 120 days after the date of authorization.

34 (d) A limited liability company's indebtedness issued as a distribution made in  
35 accordance with this section is at parity with the limited liability company's indebtedness to its  
36 general, unsecured creditors except to the extent otherwise provided by agreement.

37 (e) Indebtedness of a limited liability company, including indebtedness issued as a  
38 distribution, is not considered a liability for purposes of determinations under subsection (a) of  
39 this section if its terms provide that payment of principal and interest are made only if, and to  
40 the extent that, payment of a distribution to members could then be made under this section. If  
41 indebtedness with such terms is issued as a distribution, each payment of principal or interest,  
42 and not the issuance of the indebtedness, is treated as a distribution, the effect of which is  
43 measured on the date the payment is actually made.

44 (f) As used in this section, "distribution" does not include amounts constituting  
45 reasonable compensation for present or past services and does not include reasonable payments  
46 made in the ordinary course of business under a bona fide retirement plan or other benefits  
47 program. (1993, c. 354, s. 1; 2009-247, s. 3.)  
48

49 **§ 57C-4-07. Liability upon wrongful distribution.**

50 (a) A manager or director who votes for or assents to a distribution in violation of G.S.  
51 57C-4-06 or a written operating agreement is personally liable to the limited liability company

1 for the amount of the distribution that exceeds what could have been distributed without  
2 violating G.S. 57C-4-06 or the operating agreement if it is established that the manager or  
3 director did not act in compliance with G.S. 57C-3-22.

4 (b) Each manager or director held liable under subsection (a) of this section for a  
5 wrongful distribution is entitled to:

6 (1) Contribution from each other manager or director who could be held liable  
7 under subsection (a) of this section for the wrongful distribution; and

8 (2) Reimbursement from each member for the amount the member received  
9 knowing that the distribution was made in violation of G.S. 57C-4-06 or the  
10 operating agreement.

11 (c) A proceeding under this section is barred unless it is commenced within three years  
12 after the date on which the effect of the distribution is measured under G.S. 57C-4-06(c).  
13 (1993, c. 354, s. 1; 2001-387, s. 72.)  
14

#### 15 **§ 57C-4-08. Right to distribution.**

16 Subject to the provisions of this Article, at the time a member becomes entitled to receive a  
17 distribution, the member has the status of, and is entitled to all remedies available to, a creditor  
18 of the limited liability company with respect to the distribution. (1993, c. 354, s. 1.)  
19

### 20 Article 5.

#### 21 Assignment of Membership Interests; Withdrawal.

#### 22 **§ 57C-5-01. Nature of membership interest.**

23 A membership interest is personal property. A member has no interest in specific limited  
24 liability company property. (1993, c. 354, s. 1.)  
25

#### 26 **§ 57C-5-02. Assignment of membership interest.**

27 Except as provided in the articles of organization or a written operating agreement, a  
28 membership interest is assignable in whole or in part. An assignment of a membership interest  
29 does not dissolve the limited liability company or entitle the assignee to become or exercise any  
30 rights of a member. An assignment entitles the assignee to receive, to the extent assigned, only  
31 the distributions and allocations to which the assignor would be entitled but for the assignment.  
32 Except as provided in the articles of organization or a written operating agreement, a member  
33 ceases to be a member upon assignment of all of his membership interest. Except as provided  
34 in the articles of organization or a written operating agreement, the pledge of, or granting of a  
35 security interest, lien, or other encumbrance in or against, all or any part of the membership  
36 interest of a member shall not cause the member to cease to be a member or the secured party  
37 to have the power to exercise any rights or powers of a member. (1993, c. 354, s. 1.)  
38

#### 39 **§ 57C-5-03. Rights of judgment creditor.**

40 On application to a court of competent jurisdiction by any judgment creditor of a member,  
41 the court may charge the membership interest of the member with payment of the unsatisfied  
42 amount of the judgment with interest. To the extent so charged, the judgment creditor has only  
43 the rights of an assignee of the membership interest. This Chapter does not deprive any  
44 member of the benefit of any exemption laws applicable to his membership interest. (1993, c.  
45 354, s. 1.)  
46

#### 47 **§ 57C-5-04. Right of assignee to become a member.**

48 (a) An assignee of (or other person having only the rights of an assignee under G.S.  
49 57C-5-02 with respect to) an interest in a limited liability company may become a member only  
50 with that person's consent and:

- 1 (1) By meeting the requirements provided in the articles of organization or  
2 operating agreement;
- 3 (2) By the unanimous consent of the members, if the articles of organization or  
4 operating agreement do not provide otherwise; or
- 5 (3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability  
6 company ceases to have any members.

7 The consent of a member may be evidenced as provided in the articles of organization or  
8 operating agreement. If the articles of organization or operating agreement do not provide  
9 otherwise, then consent is to be evidenced by a written instrument, dated and signed by the  
10 member, or evidenced by a vote taken at a meeting of members.

11 (b) An assignee who becomes a member has, to the extent assigned, the rights and  
12 powers, and is subject to the restrictions and liabilities, of a member under the articles of  
13 organization, any operating agreements, and this Chapter. Notwithstanding the preceding  
14 sentence, unless otherwise provided in a written operating agreement, an assignee who  
15 becomes a member is liable for any obligations of his assignor to make contributions under  
16 G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor  
17 under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not  
18 obligated for liabilities unknown to the assignee at the time the assignee became a member and  
19 which could not be ascertained from the articles of organization or a written operating  
20 agreement.

21 (c) Whether or not an assignee of a membership interest becomes a member, the  
22 assignor is not released from liability that the assignor may have under G.S. 57C-4-02 or G.S.  
23 57C-4-07. (1993, c. 354, s. 1; 2009-247, s. 4.)  
24

#### 25 **§ 57C-5-05. Powers of legal representative of a dissolved member.**

26 Unless otherwise provided in the articles of organization or a written operating agreement,  
27 if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of  
28 that member may be exercised by its legal representative or successor for the purpose of  
29 liquidating, winding up, and making final distributions of the entity's assets to its owners,  
30 beneficiaries, or creditors. (1993, c. 354, s. 1; 2009-247, s. 5.)  
31

#### 32 **§ 57C-5-06. Voluntary withdrawal of member.**

33 A member may withdraw only at the time or upon the happening of the events specified in  
34 the articles of organization or a written operating agreement. (1993, c. 354, s. 1; 1999-189, s.  
35 4.5; 2000-140, s. 101(t).)  
36

#### 37 **§ 57C-5-07. Distribution upon withdrawal.**

38 Except as provided in and to the extent provided under this Chapter, upon withdrawal, any  
39 withdrawing member is entitled to receive any distribution to which he is otherwise entitled  
40 under the articles of organization or a written operating agreement, or, if not otherwise  
41 provided in the articles of organization or a written operating agreement, upon a reasonable  
42 time after withdrawal, the fair value of the member's interest in the limited liability company as  
43 of the date of withdrawal based upon the member's right to share in distributions from the  
44 limited liability company. (1995, c. 351, s. 10; 1999-189, s. 4.6; 2000-140, s. 101(t).)  
45

### 46 Article 6. 47 Dissolution.

#### 48 **§ 57C-6-01. Dissolution.**

49 A limited liability company is dissolved and its affairs shall be wound up at or upon the  
50 first to occur of the following:

- 1 (1) The time specified in the articles of organization or a written operating  
2 agreement;
- 3 (2) The happening of an event specified in the articles of organization or a  
4 written operating agreement;
- 5 (3) The written consent of all members or, if the limited liability company never  
6 had any members, a majority of the organizers;
- 7 (4) The 90th day after the day on which a limited liability company that once  
8 had one or more members ceases to have any members, unless within that  
9 90-day period, one or more persons are designated or otherwise admitted,  
10 with their consent, as members either as provided by the articles of  
11 organization or a written operating agreement or, if the articles of  
12 organization or written operating agreement do not so provide, are  
13 designated or otherwise admitted as members by the assignee (or other  
14 person having only the rights of an assignee under G.S. 57C-5-02 who  
15 controls the interest) of the person who was the last member of the limited  
16 liability company; or
- 17 (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing  
18 by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03.  
19 (1993, c. 354, s. 1; 1995, c. 351, s. 12; 1999-189, s. 5.1; 2000-140, s. 101(t);  
20 2009-247, s. 6.)  
21

#### 22 **§ 57C-6-02. Grounds for judicial dissolution.**

23 The superior court may dissolve a limited liability company in a proceeding by the  
24 following:

- 25 (1) The Attorney General if it is established that (i) the limited liability company  
26 obtained its articles of organization through fraud; or (ii) the limited liability  
27 company has, after written notice by the Attorney General given at least 120  
28 days prior thereto, continued to exceed or abuse the authority conferred upon  
29 it by law;
- 30 (2) A member if it is established that (i) the managers, directors, or any other  
31 persons in control of the limited liability company are deadlocked in the  
32 management of the affairs of the limited liability company, the members are  
33 unable to break the deadlock, and irreparable injury to the limited liability  
34 company is threatened or being suffered, or the business and affairs of the  
35 limited liability company can no longer be conducted to the advantage of the  
36 members generally, because of the deadlock; (ii) liquidation is reasonably  
37 necessary for the protection of the rights or interests of the complaining  
38 member, (iii) the assets of the limited liability company are being misapplied  
39 or wasted; or (iv) the articles of organization or a written operating  
40 agreement entitles the complaining member to dissolution of the limited  
41 liability company; or
- 42 (3) The limited liability company to have its voluntary dissolution continued  
43 under court supervision. (1993, c. 354, s. 1; 1995, c. 351, s. 11; 1999-189, s.  
44 5.2; 2000-140, s. 101(t); 2001-387, s. 73.)  
45

#### 46 **§ 57C-6-02.1. Procedure for judicial dissolution.**

47 (a) Venue for a proceeding to dissolve a limited liability company lies in the county  
48 where the limited liability company's principal office (or, if none in this State, its registered  
49 office) is or was last located.

50 (b) It is not necessary to join members as parties to a proceeding to dissolve a limited  
51 liability company unless relief is sought against them individually, however the court shall

1 order that appropriate notice of the dissolution proceeding be given to all members by the party  
2 initiating the proceeding.

3 (c) A court in a proceeding brought to dissolve a limited liability company may issue  
4 injunctions, appoint a receiver with all powers and duties the court directs, take other action  
5 required to preserve the assets of the limited liability company, wherever located, and carry on  
6 the business of the limited liability company.

7 (d) In any proceeding brought by a member under G.S. 57C-6-02(2)(ii) in which the  
8 court determines that dissolution would be appropriate, the court shall not order dissolution if,  
9 after the court's determination, the limited liability company elects to purchase the membership  
10 interest of the complaining member at its fair value, as determined in accordance with any  
11 procedures the court may provide. (1999-189, s. 5.3; 2000-140, s. 101(t).)

### 12 **§ 57C-6-02.2. Receivership.**

13 (a) A court in a judicial proceeding brought to dissolve a limited liability company may  
14 appoint one or more receivers to wind up or to manage the business and affairs of the limited  
15 liability company. Before appointing a receiver, the court shall hold a hearing after notifying all  
16 parties to the proceeding and any interested persons designated by the court. The court  
17 appointing a receiver has exclusive jurisdiction over the limited liability company and all of its  
18 property, wherever located.

19 (b) The court may appoint an individual or other person as a receiver. The court may  
20 require the receiver to post bond, with or without sureties, in an amount the court directs.

21 (c) The court shall describe the powers and duties of the receiver in its appointing  
22 order, which may be amended from time to time. The powers may include the authority to:

- 23 (1) Dispose of all or any part of the assets of the limited liability company  
24 wherever located, at a public or private sale, if authorized by the court;
- 25 (2) Sue and defend in the receiver's own name as receiver of the limited liability  
26 company in all courts of this State; and
- 27 (3) Exercise all of the powers of the limited liability company, through or in  
28 place of its managers, to the extent necessary to manage the affairs of the  
29 limited liability company in the best interests of its members and creditors.

30 (d) From time to time during the receivership, the court may order compensation paid  
31 and expense disbursements or reimbursements made to the receiver and the receiver's counsel  
32 from the assets of the limited liability company or proceeds from the sale of the assets.  
33 (1999-189, s. 5.4; 2000-140, s. 101(t).)

### 34 **§ 57C-6-02.3. Decree of dissolution.**

35 (a) If, after a hearing, the court determines that one or more grounds for judicial  
36 dissolution described in G.S. 57C-6-02 exist, it may enter a decree dissolving the limited  
37 liability company and specifying the effective date of the dissolution, and the clerk of the court  
38 shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

39 (b) After entering the decree of dissolution, the court shall direct the winding up of the  
40 limited liability company's business and affairs in accordance with G.S. 57C-6-04 and G.S.  
41 57C-6-05 and the notification of claimants in accordance with G.S. 57C-6-07 and G.S.  
42 57C-6-08. The limited liability company's name becomes available for use by another entity as  
43 provided in G.S. 55D-21. (1999-189, s. 5.5; 2000-140, s. 101(t); 2001-358, s. 31; 2001-387, ss.  
44 173, 175(a); 2001-413, s. 6.)

### 45 **§ 57C-6-03. Administrative dissolution.**

46 (a) The Secretary of State may administratively dissolve a limited liability company if  
47 the Secretary of State determines that:  
48  
49  
50

- 1 (1) The limited liability company has not paid within 60 days after they are due  
2 any penalties, fees, or other payments due under this Chapter;
- 3 (2) The limited liability company does not deliver its annual report to the  
4 Secretary of State on or before the date it is due;
- 5 (3) The limited liability company has been without a registered agent or  
6 registered office in this State for 60 days or more;
- 7 (4) The limited liability company has not notified the Secretary of State within  
8 60 days that its registered agent or registered office has been changed, that  
9 its registered agent has resigned, or that its registered office has been  
10 discontinued; or
- 11 (5) The limited liability company's period of duration stated in its articles of  
12 organization has expired.

13 (b) If the Secretary of State determines that one or more grounds exist under subsection  
14 (a) of this section for dissolving a limited liability company, the Secretary of State shall mail  
15 the limited liability company written notice of that determination. If, within 60 days after the  
16 notice is mailed, the limited liability company does not correct each ground for dissolution or  
17 demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not  
18 exist, the Secretary of State shall administratively dissolve a limited liability company by  
19 signing a certificate of dissolution that recites the ground or grounds for dissolution and its  
20 effective date. The Secretary of State shall file the original certificate of dissolution and mail a  
21 copy to the limited liability company.

22 (c) A limited liability company administratively dissolved under this section may apply  
23 to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal  
24 of any denial of the limited liability company's application for reinstatement shall be the same  
25 procedures applicable to corporations under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the  
26 time the limited liability company applies for reinstatement, the name of the limited liability  
27 company is not distinguishable from the name of another entity authorized to be used under  
28 G.S. 55D-21, then the limited liability company must change its name to a name that is  
29 distinguishable upon the records of the Secretary of State from the name of the other entity  
30 before the Secretary of State may prepare a certificate of reinstatement. The effect of  
31 reinstatement of a limited liability company shall be the same as for a corporation under G.S.  
32 55-14-22. (1993, c. 354, s. 1; 1996, 2nd Ex. Sess., c. 17, s. 15.1(e); 1997-485, s. 3; 2001-387, s.  
33 74; 2001-390, s. 11; 2001-413, s. 7.4; 2001-487, s. 62(ee).)

34  
35 **§ 57C-6-03.1.** Repealed by Session Laws 1998-228, s. 17.

36  
37 **§ 57C-6-04. Winding up.**

38 (a) Except as otherwise provided in this Chapter, the articles of organization, or a  
39 written operating agreement, the managers shall wind up the limited liability company's affairs  
40 following its dissolution. If the dissolved limited liability company has no managers, and  
41 provision is not otherwise made in the articles of organization or a written operating agreement,  
42 the legal representative of or successor to the last remaining member may wind up the limited  
43 liability company's affairs. The court may wind up the limited liability company's affairs, or  
44 appoint a person to wind up its affairs, on application of any member, his legal representative,  
45 or assignee.

46 (b) As promptly as reasonably possible following dissolution as is consistent with  
47 obtaining the fair market value for the limited liability company's assets, the persons charged  
48 with winding up the limited liability company shall collect its assets, dispose of its properties  
49 that will not be distributed in kind to its members, discharge or make provision for discharging  
50 its liabilities, and distribute its remaining assets as provided in G.S. 57C-6-05. The limited  
51 liability company shall continue in existence following its dissolution and during its winding

1 up, but shall carry on only that business appropriate to wind up and liquidate its business and  
2 affairs.

3 (c) The dissolution of the limited liability company does not transfer title to its assets,  
4 prevent assignment of its member interests, subject its managers to standards of conduct  
5 different from those prescribed in Article 3 of this Chapter, change any provisions of its  
6 operating agreement except as provided in subsection (b) of this section, prevent  
7 commencement of a proceeding by or against the limited liability company in its own name,  
8 abate or suspend a proceeding by or against the limited liability company, or terminate the  
9 authority of the registered agent of the limited liability company. (1993, c. 354, s. 1; 2001-387,  
10 s. 75.)

11  
12 **§ 57C-6-05. Distribution of assets.**

13 Upon the winding up of a limited liability company, its assets shall be applied as follows:

- 14 (1) To creditors, including members who are creditors, to the extent permitted  
15 by law, in satisfaction of liabilities of the limited liability company other  
16 than liabilities for distributions to members under G.S. 57C-4-04;
- 17 (2) Except as provided in the articles of organization or a written operating  
18 agreement, to members or former members in satisfaction of liabilities for  
19 distributions under G.S. 57C-4-04; and
- 20 (3) Except as provided in the articles of organization or a written operating  
21 agreement, by distribution to the members and to any former member whose  
22 event of withdrawal resulted in the dissolution in proportion to the agreed  
23 value, as stated in the limited liability company records required to be kept  
24 pursuant to G.S. 57C-3-04(a)(5), of the contributions made by each such  
25 member and former member, after such agreed values are adjusted by: (i)  
26 adding thereto the person's share of the profits of the limited liability  
27 company, and (ii) deducting therefrom the person's share of the losses of the  
28 limited liability company and all distributions previously received by the  
29 person. (1993, c. 354, s. 1.)  
30

31 **§ 57C-6-06. Articles of dissolution.**

32 Upon the dissolution and the commencement of winding up of the limited liability  
33 company, articles of dissolution shall be filed in the Office of the Secretary of State and shall  
34 set forth:

- 35 (1) The name of the limited liability company;
- 36 (2) The dates of filing of its articles of organization and all amendments thereto;
- 37 (3) The reason for filing the articles of dissolution;
- 38 (4) The effective date (which shall be a date certain) of the dissolution, as  
39 determined in accordance with G.S. 57C-6-01; and
- 40 (5) Any other information the managers filing the articles of dissolution  
41 determine. (1993, c. 354, s. 1; 2001-387, s. 76.)  
42

43 **§ 57C-6-06.1:** Repealed by Session Laws 2009-247, s. 7, effective January 1, 2010.  
44

45 **§ 57C-6-07. Known claims against dissolved limited liability company.**

46 (a) A dissolved limited liability company may dispose of the known claims against it by  
47 following the procedure described in this section.

48 (b) The dissolved limited liability company shall notify its known claimants in writing  
49 of the dissolution at any time after it has filed its articles of dissolution. The written notice  
50 must:

- 51 (1) Describe information that must be included in a claim;

- 1 (2) Provide a mailing address where claims may be sent;  
2 (3) State the deadline, which may not be fewer than 120 days from the date of  
3 the written notice, by which the dissolved limited liability company must  
4 receive the claim; and  
5 (4) State that the claim will be barred if not received by the deadline.  
6 (c) A claim against the dissolved limited liability company is barred:  
7 (1) If the limited liability company does not receive the claim by the deadline  
8 from a claimant who received written notice under subsection (b) of this  
9 section; or  
10 (2) If a claimant whose claim was rejected by written notice from the dissolved  
11 limited liability company does not commence a proceeding to enforce the  
12 claim within 90 days from the date of receipt of the rejection notice.  
13 (d) For purposes of this section, "claim" does not include a contingent liability or a  
14 claim based on an event occurring after the filing of the articles of dissolution. (1993, c. 354, s.  
15 1.)  
16

17 **§ 57C-6-08. Unknown and certain other claims against dissolved limited liability**  
18 **company.**

19 (a) A dissolved limited liability company that has filed articles of dissolution may also  
20 publish notice of its dissolution and request that persons with claims against the limited liability  
21 company present them in accordance with the notice.

22 (b) The notice must:

- 23 (1) Be published one time in a newspaper of general circulation in the county  
24 where the dissolved limited liability company's principal office (or, if none  
25 in this State, its registered office) is or was last located;  
26 (2) Describe the information that must be included in a claim and provide a  
27 mailing address where the claim may be sent; and  
28 (3) State that a claim against the limited liability company will be barred unless  
29 a proceeding to enforce the claim is commenced within five years after the  
30 publication of the notice.

31 (c) If the dissolved limited liability company publishes a newspaper notice in  
32 accordance with subsections (a) and (b) of this section, the claim of each of the following  
33 claimants is barred unless the claimant commences a proceeding to enforce the claim against  
34 the dissolved limited liability company within five years after the publication date of the  
35 newspaper notice:

- 36 (1) A claimant who was known but did not receive written notice under G.S.  
37 57C-6-07;  
38 (2) A claimant whose claim was timely sent to the dissolved limited liability  
39 company but not acted on; or  
40 (3) A claimant whose claim is contingent or based on an event occurring after  
41 the filing of the articles of dissolution. (1993, c. 354, s. 1.)  
42

43 **§ 57C-6-09. Enforcement of claims.**

44 (a) A claim under G.S. 57C-6-07 or G.S. 57C-6-08 may be enforced:

- 45 (1) Against the dissolved limited liability company, to the extent of its  
46 undistributed assets, including coverage under any applicable insurance  
47 policy; or  
48 (2) If the assets have been distributed in winding up, against a member of the  
49 dissolved limited liability company to the extent of his pro rata share of the  
50 claim or the limited liability company assets distributed to him in winding

1 up, whichever is less, but a member's total liability for all claims under this  
2 section may not exceed the total amount of assets distributed to him.

3 (b) Nothing in G.S. 57C-6-07 or G.S. 57C-6-08 shall extend any applicable period of  
4 limitation. (1993, c. 354, s. 1.)

5  
6 Article 7.

7 Foreign Limited Liability Companies.

8 **§ 57C-7-01. Law governing.**

9 The laws of the state or other jurisdiction under which a foreign limited liability company is  
10 formed shall govern its formation, organization, and internal affairs and the liability of its  
11 managers and members, regardless of whether the foreign limited liability company procured  
12 or should have procured a certificate of authority under this Chapter, and a foreign limited  
13 liability company shall not be denied a certificate of authority by reason of any difference  
14 between the laws under which it is formed and the laws of this State. A foreign limited liability  
15 company with a valid certificate of authority has the same but no greater rights and has the  
16 same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and  
17 liabilities now or later imposed on, a domestic limited liability company of like character.  
18 (1993, c. 354, s. 1; 2001-387, s. 78.)

19  
20 **§ 57C-7-02. Authority to transact business required.**

21 (a) A foreign limited liability company may not transact business in this State until it  
22 obtains a certificate of authority from the Secretary of State.

23 (b) Without excluding other activities that may not constitute transacting business in  
24 this State, a foreign limited liability company shall not be considered to be transacting business  
25 in this State for the purposes of this Chapter by reason of carrying on in this State any one or  
26 more of the following activities:

- 27 (1) Maintaining or defending any action or suit or any administrative or  
28 arbitration proceeding, or effecting the settlement thereof or the settlement  
29 of claims or disputes;
- 30 (2) Holding meetings of its managers or members or carrying on other activities  
31 concerning its internal affairs;
- 32 (3) Maintaining bank accounts or borrowing money in this State, with or  
33 without security, even if such borrowings are repeated and continuous  
34 transactions;
- 35 (4) Maintaining offices or agencies for the transfer, exchange, and registration  
36 of its membership interests, or appointing and maintaining trustees or  
37 depositories with relation to its membership interests;
- 38 (5) Soliciting or procuring orders, whether by mail or through employees or  
39 agents or otherwise, where the orders require acceptance without this State  
40 before becoming binding contracts;
- 41 (6) Making or investing in loans with or without security including servicing of  
42 mortgages or deeds of trust through independent agencies within the State,  
43 the conducting of foreclosure proceedings and sales, the acquiring of  
44 property at foreclosure sale, and the management and rental of such property  
45 for a reasonable time while liquidating its investment, provided no office or  
46 agency therefor is maintained in this State;
- 47 (7) Taking security for or collecting debts due to it or enforcing any rights in  
48 property securing the same;
- 49 (8) Transacting business in interstate commerce;
- 50 (9) Conducting an isolated transaction completed within a period of six months  
51 and not in the course of a number of repeated transactions of like nature;

1 (10) Selling through independent contractors; and

2 (11) Owning, without more, real or personal property.

3 (c) This section does not apply in determining the contacts or activities that may subject  
4 a foreign limited liability company to service of process or taxation in this State or to regulation  
5 under any other law of this State. (1993, c. 354, s. 1.)  
6

7 **§ 57C-7-03. Consequences of transacting business without authority.**

8 (a) No foreign limited liability company transacting business in this State without  
9 permission obtained through a certificate of authority under this Chapter shall be permitted to  
10 maintain any action or proceeding in any court of this State unless the foreign limited liability  
11 company shall have obtained a certificate of authority prior to trial. An issue arising under this  
12 subsection must be raised by motion and determined by the trial judge prior to trial.

13 (b) A foreign limited liability company failing to obtain a certificate of authority as  
14 required by this Chapter shall be liable to the State for the years or parts thereof during which it  
15 transacted business in this State without a certificate of authority in an amount equal to all fees  
16 and taxes which would have been imposed by law upon the foreign limited liability company  
17 had it duly applied for and received such permission, plus interest and all penalties imposed by  
18 law for failure to pay such fees and taxes. In addition, the foreign limited liability company  
19 shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total  
20 of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this State  
21 without a certificate of authority. The Attorney General may bring actions to recover all  
22 amounts due the State under the provisions of this subsection. The clear proceeds of civil  
23 penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture  
24 Fund in accordance with G.S. 115C-457.2.

25 (c) Notwithstanding subsection (a) of this section, the failure of a foreign limited  
26 liability company to obtain a certificate of authority does not impair the validity of its acts or  
27 prevent it from defending any proceeding in this State.

28 (d) The Secretary of State is directed to require that every foreign limited liability  
29 company transacting business in this State comply with the provisions of this Chapter. The  
30 Secretary of State may employ such assistants as shall be deemed necessary in the Secretary of  
31 State's office for the purpose of enforcing the provisions of this Article and for making such  
32 investigations as shall be necessary to ascertain foreign limited liability companies transacting  
33 business in this State that may have failed to comply with the provisions of this Chapter. (1993,  
34 c. 354, s. 1; 1998-215, s. 119.)  
35

36 **§ 57C-7-04. Application for certificate of authority.**

37 (a) A foreign limited liability company may apply for a certificate of authority to  
38 transact business in this State by delivering an application to the Secretary of State for filing.  
39 The application must set forth:

40 (1) The name of the foreign limited liability company or a name that satisfies  
41 the requirements of Article 3 of Chapter 55D of the General Statutes;

42 (2) The name of the state or country under whose law it is formed;

43 (3) Its date of formation and period of duration;

44 (4) The street address, and the mailing address if different from the street  
45 address, of its principal office, if any, and the county in which the principal  
46 office, if any, is located;

47 (5) The street address, and the mailing address if different from the street  
48 address, of its registered office in this State and the name of its registered  
49 agent at that office; and

50 (6) The names and usual business addresses of its current managers.

1 (b) The foreign limited liability company shall deliver with the completed application a  
2 certificate of existence (or a document of similar import) duly authenticated by the Secretary of  
3 State or other official having custody of limited liability company records in the state or  
4 country under whose law it is formed.

5 (c) If the Secretary of State finds that the application conforms to law, the Secretary of  
6 State shall, when all taxes and fees have been tendered as prescribed in this Chapter:

- 7 (1) Endorse on the application and an exact or conformed copy thereof the word  
8 "filed" and the hour, day, month, and year of the filing thereof;
- 9 (2) File in his office the application and the certificate of existence (or document  
10 of similar import as described in subsection (b) of this section);
- 11 (3) Issue a certificate of authority to transact business in this State to which the  
12 Secretary of State shall affix the exact or conformed copy of the application;  
13 and
- 14 (4) Send to the foreign limited liability company or its representative the  
15 certificate of authority, together with the exact or conformed copy of the  
16 application affixed thereto. (1993, c. 354, s. 1; 2000-140, s. 50; 2001-358, s.  
17 28; 2001-387, ss. 79, 80, 173, 175(a); 2001-413, s. 6.)  
18

19 **§ 57C-7-05. Amended certificate of authority.**

20 (a) A foreign limited liability company authorized to transact business in this State must  
21 obtain an amended certificate of authority from the Secretary of State if it changes:

- 22 (1) Its name;
- 23 (2) The period of its duration; or
- 24 (3) The state or country of its formation.

25 (b) A foreign limited liability company may apply for an amended certificate of  
26 authority by delivering an application to the Secretary of State for filing that sets forth:

- 27 (1) The name of the limited liability company and the name in which the limited  
28 liability company is authorized to transact business in North Carolina if  
29 different;
- 30 (2) The name of the state or country under whose law it is formed;
- 31 (3) The date it was originally authorized to transact business in this State; and
- 32 (4) A statement of the change or changes being made.

33 Except for the content of the application, the requirements of G.S. 57C-7-03 for obtaining an  
34 original certificate of authority apply to obtaining an amended certificate under this section.  
35 (1993, c. 354, s. 1; 2001-387, ss. 81, 82.)  
36

37 **§ 57C-7-06:** Repealed by Session Laws 2001-358, s. 29.  
38

39 **§ 57C-7-07. Registered office and registered agent of foreign limited liability company.**

40 Each foreign limited liability company authorized to transact business or conduct affairs in  
41 this State must maintain a registered office and registered agent as required by Article 4 of  
42 Chapter 55D of the General Statutes and is subject to service on the Secretary of State under  
43 that Article. (1993, c. 354, s. 1; 2000-140, s. 101(h); 2001-358, s. 49(b); 2001-387, ss. 173,  
44 175(a); 2001-413, s. 6.)  
45

46 **§§ 57C-7-08 through 57C-7-10:** Repealed by Session Laws 2001-358, s. 49, effective January  
47 1, 2002.  
48

49 **§ 57C-7-11. Withdrawal of foreign limited liability company.**

1 (a) A foreign limited liability company authorized to transact business in this State may  
2 not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of  
3 State.

4 (b) A foreign limited liability company authorized to transact business in this State may  
5 apply for a certificate of withdrawal by delivering an application to the Secretary of State for  
6 filing. The application must set forth:

- 7 (1) The name of the foreign limited liability company and the name of the state  
8 or country under whose law it is formed;
- 9 (2) That it is not transacting business in this State and that it surrenders its  
10 authority to transact business in this State;
- 11 (3) That the foreign limited liability company revokes the authority of its  
12 registered agent to accept service of process and consents that service of  
13 process in any action or proceeding based upon any cause of action arising  
14 in this State, or arising out of business transacted in this State, during the  
15 time the foreign limited liability company was authorized to transact  
16 business in this State, may thereafter be made on such foreign limited  
17 liability company by service thereof on the Secretary of State;
- 18 (4) A mailing address to which the Secretary of State may mail a copy of any  
19 process served on the Secretary of State under subdivision (3) of this  
20 subsection; and
- 21 (5) A commitment to file with the Secretary of State a statement of any  
22 subsequent change in its mailing address.

23 (c) If the Secretary of State finds that the application conforms to law, the Secretary of  
24 State shall:

- 25 (1) Endorse on the application and an exact or conformed copy thereof the word  
26 "filed" and the hour, day, month, and year of the filing thereof;
- 27 (2) File the application in the Secretary of State's office;
- 28 (3) Issue a certificate of withdrawal to which the Secretary of State shall affix  
29 the exact or conformed copy of the application; and
- 30 (4) Send to the foreign limited liability company or its representative the  
31 certificate of withdrawal together with the exact or conformed copy of the  
32 application affixed thereto.

33 (d) After the withdrawal of the foreign limited liability company is effective, service of  
34 process on the Secretary of State in accordance with subsection (b) of this section shall be made  
35 by delivering to and leaving with the Secretary of State, or with any clerk authorized by the  
36 Secretary of State to accept service of process, duplicate copies of that process and the fee  
37 required by G.S. 57C-1-22(b). Upon receipt of process in the manner provided in this  
38 subsection, the Secretary of State shall mail a copy of the process by registered or certified  
39 mail, return receipt requested, to the foreign limited liability company at the mailing address  
40 designated pursuant to subsection (b) of this section. (1993, c. 354, s. 1; 2001-387, ss. 86, 87.)

41  
42 **§ 57C-7-12. Withdrawal of limited liability company by reason of a merger,  
43 consolidation, or conversion.**

44 (a) Whenever a foreign limited liability company authorized to transact business in this  
45 State ceases its separate existence as a result of a statutory merger, consolidation, or conversion  
46 permitted by the laws of the state or country under which it was formed, or converts into  
47 another type of entity as permitted by those laws, the surviving or resulting entity shall apply  
48 for a certificate of withdrawal for the foreign limited liability company by delivering to the  
49 Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a  
50 certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by  
51 the Secretary of State or other official having custody of limited liability company records in

1 the state or country under the laws of which the foreign limited liability company was formed.  
2 If the surviving or resulting entity is not authorized to transact business or conduct affairs in  
3 this State, the articles or certificate must be accompanied by an application which must set  
4 forth:

- 5 (1) The name of the foreign limited liability company authorized to transact  
6 business in this State, the type of entity and name of the surviving or  
7 resulting entity, and a statement that the surviving or resulting entity is not  
8 authorized to transact business or conduct affairs in this State;
- 9 (2) A statement that the surviving or resulting entity consents that service of  
10 process based upon any cause of action arising in this State, or arising out of  
11 business transacted in this State, during the time the foreign limited liability  
12 company was authorized to transact business in this State, may thereafter be  
13 made by service thereof on the Secretary of State;
- 14 (3) A mailing address to which the Secretary of State may mail a copy of any  
15 process served on the Secretary of State under subdivision (a)(2) of this  
16 section; and
- 17 (4) A commitment to file with the Secretary of State a statement of any  
18 subsequent change in its mailing address.

19 (b) If the Secretary of State finds that the articles or certificate and the application for  
20 withdrawal, if required, conform to law, the Secretary of State shall:

- 21 (1) Endorse on the articles or certificate and the application for withdrawal, if  
22 required, the word "filed" and the hour, day, month, and year of filing  
23 thereof;
- 24 (2) File the articles or certificate and the application, if required;
- 25 (3) Issue a certificate of withdrawal; and
- 26 (4) Send to the surviving or resulting entity or its representative the certificate of  
27 withdrawal, together with the exact or conformed copy of the application, if  
28 required, affixed thereto.

29 (c) After the withdrawal of the foreign limited liability company is effective, service of  
30 process on the Secretary of State in accordance with subsection (a) of this section shall be made  
31 by delivering to and leaving with the Secretary of State, or with any clerk authorized by the  
32 Secretary of State to accept service of process, duplicate copies of process and the fee required  
33 by G.S. 57C-1-22(b). Upon receipt of process in the manner provided in this subsection, the  
34 Secretary of State shall immediately mail a copy of the process by registered or certified mail,  
35 return receipt requested, to the surviving or resulting entity at the mailing address designated  
36 pursuant to subsection (a) of this section. (1993, c. 354, s. 1; 1999-369, s. 3.6; 2000-140, s.  
37 101(i); 2001-387, ss. 88, 89; 2001-487, s. 62(k).)

### 38 39 **§ 57C-7-13. Action by Attorney General.**

40 The Attorney General may maintain an action to restrain a foreign limited liability company  
41 from transacting business in this State in violation of this Article. (1993, c. 354, s. 1.)  
42

### 43 **§ 57C-7-14. Revocation of certificate of authority.**

44 (a) The Secretary of State may administratively revoke the certificate of authority of a  
45 foreign limited liability company authorized to transact business in this State if the Secretary of  
46 State determines that:

- 47 (1) The foreign limited liability company has not paid, within 60 days after they  
48 are due, any penalties, fees, or other payments due under this Chapter;
- 49 (2) The foreign limited liability company has not delivered its annual report to  
50 the Secretary of State on or before the date it is due;

- 1 (3) The foreign limited liability company has been without a registered agent or  
2 a registered office in this State for 60 days or more;
- 3 (4) The foreign limited liability company does not inform the Secretary of State  
4 as required by this Chapter that its registered agent or registered office has  
5 been changed, that its registered agent has resigned, or that its registered  
6 office has been discontinued within 60 days of the change, resignation, or  
7 discontinuance;
- 8 (5) An organizer, member, manager, or agent of the foreign limited liability  
9 company has signed a document that he knew was false in any material  
10 respect with the intent the document be delivered to the Secretary of State  
11 for filing;
- 12 (6) The Secretary of State receives a duly authenticated certificate from the  
13 secretary of state or other official having custody of limited liability  
14 company records in the state or country under whose law the foreign limited  
15 liability company is organized stating that it has been dissolved or has  
16 ceased to exist as the result of a merger or otherwise; or
- 17 (7) The limited liability company is exceeding the authority conferred upon it by  
18 this Chapter.

19 (b) If the Secretary of State determines that one or more grounds exist under this section  
20 for revocation of the certificate of authority, the Secretary of State shall mail the foreign limited  
21 liability company written notice of his determination. If, within 60 days after notice is mailed, a  
22 foreign limited liability company does not correct each ground for revocation, or demonstrate  
23 to the reasonable satisfaction of the Secretary of State that each ground does not exist, the  
24 Secretary of State shall revoke the foreign limited liability company's certificate of authority by  
25 signing a certificate of revocation that recites the ground or grounds for the revocation, shall  
26 file the certificate of revocation, and shall mail a copy to the foreign limited liability company.  
27 The authority of the foreign limited liability company to transact business in this State shall  
28 cease on the date the certificate of authority is revoked by the filing of the certificate of  
29 revocation by the Secretary of State.

30 (c) Upon the revocation of a foreign limited liability company's certificate of authority,  
31 the Secretary of State shall become the foreign limited liability company's agent for service of  
32 process in any proceeding based on a cause of action arising in this State or arising out of  
33 business transacted in this State during the time the foreign limited liability company was  
34 authorized to transact business in this State. The Secretary of State shall then proceed in  
35 accordance with G.S. 55D-33.

36 (d) A foreign limited liability company may appeal the Secretary of State's revocation  
37 of its certificate of authority under the same procedures that a foreign corporation may appeal  
38 the revocation of its certificate of authority pursuant to G.S. 55-15-32 and G.S. 55-15-33.  
39 (1993, c. 354, s. 1; 2001-358, s. 49(d); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)  
40

## 41 Article 8.

### 42 Derivative Actions.

#### 43 **§ 57C-8-01. Members' derivative actions.**

44 (a) A member may bring an action in the superior court of this State in the right of any  
45 domestic or foreign limited liability company to recover a judgment in its favor if the following  
46 conditions are met:

- 47 (1) The plaintiff does not have the authority to cause the limited liability  
48 company to sue in its own right; and
- 49 (2) The plaintiff (i) is a member of the limited liability company at the time of  
50 bringing the action, and (ii) was a member of the limited liability company at  
51 the time of the transaction of which the plaintiff complains, or the plaintiff's

1 status as a member of the limited liability company thereafter devolved upon  
2 the plaintiff pursuant to the terms of the operating agreement from a person  
3 who was a member at such time.

4 (b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff  
5 to obtain the action the plaintiff desires from the managers, directors, or other applicable  
6 authority and the reasons for the plaintiff's failure to obtain the action, or for not making the  
7 effort. Whether or not a demand for action was made, if the limited liability company  
8 commences an investigation of the charges made in the demand or complaint, the court may  
9 stay any proceeding until the investigation is completed.

10 (c) Upon motion of the limited liability company, the court may appoint a committee  
11 composed of two or more disinterested managers, directors, or other disinterested persons,  
12 acceptable to the limited liability company, to determine whether it is in the best interest of the  
13 limited liability company to pursue a particular legal right or remedy. The committee shall  
14 report its findings to the court. After considering the report and any other relevant evidence, the  
15 court shall determine whether the proceeding should be continued or not.

16 (d) No action on behalf of a limited liability company shall be discontinued, dismissed,  
17 compromised, or settled without the approval of the court. If the court shall determine that the  
18 interest of the members or any class or classes thereof or of the creditors of the limited liability  
19 company will be substantially affected by such discontinuance, dismissal, compromise, or  
20 settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall  
21 be given to such members or creditors whose interests it determines will be so affected. If  
22 notice is so directed to be given, the court may determine which one or more of the parties to  
23 the action shall bear the expense of giving the same, in such amount as the court shall  
24 determine and find to be reasonable in the circumstances, and the amount of such expense shall  
25 be awarded as costs of the action.

26 (e) If the action on behalf of the limited liability company is successful, in whole or in  
27 part, whether by means of a compromise and settlement or by a judgment, the court may award  
28 the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys'  
29 fees, and shall direct the plaintiff to account to the limited liability company for the remainder  
30 of any proceeds of the action.

31 (f) In any such action the court, upon final judgment and a finding that the action was  
32 brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant  
33 or defendants the reasonable expenses, including attorneys' fees, incurred by them in the  
34 defense of the action.

35 (g) In proceedings hereunder, no member shall be entitled to obtain or have access to  
36 any communication within the scope of the limited liability company's attorney-client privilege  
37 which could not be obtained by or would not be accessible to a party in an action other than on  
38 behalf of the limited liability company. (1993, c. 354, s. 1; 2001-387, ss. 90, 91.)  
39

#### 40 Article 9.

##### 41 Merger.

42 §§ 57C-9-01 through 57C-9-06. Repealed by Session Laws 1999-369, s. 3.7, effective  
43 December 15, 1999.  
44

#### 45 Article 9A.

##### 46 Conversion and Merger.

##### 47 Part 1. Conversion to Limited Liability Company.

#### 48 § 57C-9A-01. Conversion.

49 A business entity other than a domestic limited liability company may convert to a domestic  
50 limited liability company if:

- 1 (1) The conversion is permitted by the laws of the state or country governing the  
2 organization and internal affairs of the converting business entity; and
- 3 (2) The converting business entity complies with the requirements of this Part  
4 and, to the extent applicable, the laws referred to in subdivision (1) of this  
5 section. (1999-369, s. 3.7; 2001-387, s. 93.)  
6

7 **§ 57C-9A-02. Plan of conversion.**

8 (a) The converting business entity shall approve a written plan of conversion  
9 containing:

- 10 (1) The name of the resulting domestic limited liability company into which the  
11 converting business entity shall convert;
- 12 (1a) The name of the converting business entity, its type of business entity, and  
13 the state or country whose laws govern its organization and internal affairs;
- 14 (2) The terms and conditions of the conversion; and
- 15 (3) The manner and basis for converting the interests in the converting business  
16 entity into interests, obligations, or securities of the resulting domestic  
17 limited liability company or into cash or other property in whole or in part.

18 (a1) The plan of conversion may contain other provisions relating to the conversion.

19 (a2) The provisions of the plan of conversion, other than the provisions required by  
20 subdivisions (1) and (1a) of subsection (a) of this section, may be made dependent on facts  
21 objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the  
22 manner in which the facts will operate upon the affected provisions. The facts may include any  
23 of the following:

- 24 (1) Statistical or market indices, market prices of any security or group of  
25 securities, interest rates, currency exchange rates, or similar economic or  
26 financial data.
- 27 (2) A determination or action by the converting business entity or by any other  
28 person, group, or body.
- 29 (3) The terms of, or actions taken under, an agreement to which the converting  
30 business entity is a party, or any other agreement or document.

31 (b) The plan of conversion must be approved in accordance with the laws of the state or  
32 country governing the organization and internal affairs of the converting business entity.

33 (c) After a plan of conversion has been approved as provided in subsection (b) of this  
34 section, but before articles of organization for the resulting domestic limited liability company  
35 become effective, the plan of conversion may be amended or abandoned to the extent permitted  
36 by the laws that govern the organization and internal affairs of the converting business entity.  
37 (1999-369, s. 3.7; 2001-387, s. 94; 2005-268, s. 47; 2006-226, s. 16(d); 2006-264, s. 44(g).)  
38

39 **§ 57C-9A-03. Filing of articles of organization by converting business entity.**

40 (a) After a plan of conversion has been approved by the converting business entity as  
41 provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of  
42 organization to the Secretary of State for filing. In addition to the matters required or permitted  
43 by G.S. 57C-2-21, the articles of organization shall contain articles of conversion stating:

- 44 (1) That the domestic limited liability company is being formed pursuant to a  
45 conversion of another business entity;
- 46 (2) The name of the converting business entity, its type of business entity, and  
47 the state or country whose laws govern its organization and internal affairs;  
48 and
- 49 (3) That a plan of conversion has been approved by the converting business  
50 entity as required by law.

1 If the plan of conversion is abandoned after the articles of organization have been filed with  
2 the Secretary of State but before the articles of organization become effective, the converting  
3 business entity shall deliver to the Secretary of State for filing prior to the time the articles of  
4 organization become effective an amendment to the articles of organization withdrawing the  
5 articles of organization.

6 (b) The conversion takes effect when the articles of organization become effective.

7 (c) Repealed by Session Laws 2001-387, s. 95.

8 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.  
9 (1999-369, s. 3.7; 2001-387, s. 95.)

#### 10 11 **§ 57C-9A-04. Effects of conversion.**

12 When the conversion takes effect:

- 13 (1) The converting business entity ceases its prior form of organization and  
14 continues in existence as the resulting domestic limited liability company;
- 15 (2) The title to all real estate and other property owned by the converting  
16 business entity continues vested in the resulting domestic limited liability  
17 company without reversion or impairment;
- 18 (3) All liabilities of the converting business entity continue as liabilities of the  
19 resulting domestic limited liability company;
- 20 (4) A proceeding pending by or against the converting business entity may be  
21 continued as if the conversion did not occur; and
- 22 (5) The interests in the converting business entity that are to be converted into  
23 interests, obligations, or securities of the resulting domestic limited liability  
24 company or into the right to receive cash or other property are thereupon so  
25 converted, and the former holders of interests in the converting business  
26 entity are entitled only to the rights provided in the plan of conversion.

27 The conversion shall not affect the liability or absence of liability of any holder of an  
28 interest in the converting business entity for any acts, omissions, or obligations of the  
29 converting business entity made or incurred prior to the effectiveness of the conversion. The  
30 cessation of the existence of the converting business entity in its prior form of organization in  
31 the conversion shall not constitute a dissolution or termination of the converting business  
32 entity. (1999-369, s. 3.7.)

#### 33 34 **§§ 57C-9A-05 through 57C-9A-09. Reserved for future codification purposes.**

#### 35 36 Part 1A. Conversion of Limited Liability Company.

#### 37 **§ 57C-9A-10. Conversion.**

38 A domestic limited liability company may convert to a different business entity if:

- 39 (1) The conversion is permitted by the laws of the state or country governing the  
40 organization and internal affairs of such other business entity; and
- 41 (2) The converting domestic limited liability company complies with the  
42 requirements of this Part and, to the extent applicable, the laws referred to in  
43 subdivision (1) of this section. (2001-387, s. 96.)

#### 44 45 **§ 57C-9A-11. Plan of conversion.**

46 (a) The converting domestic limited liability company shall approve a written plan of  
47 conversion containing:

- 48 (1) The name of the converting domestic limited liability company;
- 49 (2) The name of the resulting business entity into which the domestic limited  
50 liability company shall convert, its type of business entity, and the state or  
51 country whose laws govern its organization and internal affairs;

- 1 (3) The terms and conditions of the conversion; and  
2 (4) The manner and basis for converting the interests in the domestic limited  
3 liability company into interests, obligations, or securities of the resulting  
4 business entity or into cash or other property in whole or in part.

5 (a1) The plan of conversion may contain other provisions relating to the conversion.

6 (a2) The provisions of the plan of conversion, other than the provisions required by  
7 subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts  
8 objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the  
9 manner in which the facts will operate upon the affected provisions. The facts may include any  
10 of the following:

- 11 (1) Statistical or market indices, market prices of any security or group of  
12 securities, interest rates, currency exchange rates, or similar economic or  
13 financial data.  
14 (2) A determination or action by the converting domestic limited liability  
15 company or by any other person, group, or body.  
16 (3) The terms of, or actions taken under, an agreement to which the converting  
17 domestic limited liability company is a party, or any other agreement or  
18 document.

19 (b) The plan of conversion shall be approved by the domestic limited liability company  
20 in the manner provided for the approval of such conversion in its articles of organization or a  
21 written operating agreement or, if there is no such provision, by the unanimous consent of its  
22 members. If any member of the converting domestic limited liability company has or will have  
23 personal liability for any existing or future obligation of the resulting business entity solely as a  
24 result of holding an interest in the resulting business entity, then in addition to the requirements  
25 of the preceding sentence, approval of the plan of conversion by the domestic limited liability  
26 company shall require the consent of that member. The converting domestic limited liability  
27 company shall provide a copy of the plan of conversion to each member of the converting  
28 domestic limited liability company at the time provided in its articles of organization or a  
29 written operating agreement or, if there is no such provision, prior to its approval of the plan of  
30 conversion.

31 (c) After a plan of conversion has been approved by a domestic limited liability  
32 company but before the articles of conversion become effective, the plan of conversion (i) may  
33 be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any  
34 contractual rights, as provided in the plan of conversion, articles of organization, or written  
35 operating agreement or, if not so provided, as determined by the managers or directors of the  
36 domestic limited liability company in accordance with G.S. 57C-3-20(b). (2001-387, s. 96;  
37 2001-487, s. 62(n); 2005-268, s. 48.)  
38

### 39 **§ 57C-9A-12. Articles of conversion.**

40 (a) After a plan of conversion has been approved by the converting domestic limited  
41 liability company as provided in G.S. 57C-9A-11, the converting domestic limited liability  
42 company shall deliver articles of conversion to the Secretary of State for filing. The articles of  
43 conversion shall state:

- 44 (1) The name of the converting domestic limited liability company;  
45 (2) The name of the resulting business entity, its type of business entity, the  
46 state or country whose laws govern its organization and internal affairs, and,  
47 if the resulting business entity is not authorized to transact business or  
48 conduct affairs in this State, a designation of its mailing address and a  
49 commitment to file with the Secretary of State a statement of any subsequent  
50 change in its mailing address; and

1 (3) That a plan of conversion has been approved by the domestic limited  
2 liability company as required by law.

3 (b) If the domestic limited liability company is converting to a business entity whose  
4 formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32,  
5 requires the filing of a document with the Secretary of State, then notwithstanding subsection  
6 (a) of this section the articles of conversion shall be included as part of that document and shall  
7 contain the information required by the laws governing the organization and internal affairs of  
8 the resulting business entity.

9 (c) If the plan of conversion is abandoned after the articles of conversion have been  
10 filed with the Secretary of State but before the articles of conversion become effective, the  
11 converting domestic limited liability company shall deliver to the Secretary of State for filing  
12 prior to the time the articles of conversion become effective an amendment of the articles of  
13 conversion withdrawing the articles of conversion.

14 (d) The conversion takes effect when the articles of conversion become effective.

15 (e) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.  
16 (2001-387, s. 96; 2001-487, s. 62(o).)

17  
18 **§ 57C-9A-13. Effects of conversion.**

19 (a) When the conversion takes effect:

- 20 (1) The converting domestic limited liability company ceases its prior form of  
21 organization and continues in existence as the resulting business entity;  
22 (2) The title to all real estate and other property owned by the converting  
23 domestic limited liability company continues vested in the resulting business  
24 entity without reversion or impairment;  
25 (3) All liabilities of the converting domestic limited liability company continue  
26 as liabilities of the resulting business entity;  
27 (4) A proceeding pending by or against the converting domestic limited liability  
28 company may be continued as if the conversion did not occur; and  
29 (5) The interests in the converting domestic limited liability company that are to  
30 be converted into interests, obligations, or securities of the resulting business  
31 entity or into the right to receive cash or other property are thereupon so  
32 converted, and the former holders of interests in the converting domestic  
33 limited liability company are entitled only to the rights provided in the plan  
34 of conversion.

35 The conversion shall not affect the liability or absence of liability of any holder of an  
36 interest in the converting domestic limited liability company for any acts, omissions, or  
37 obligations of the converting domestic limited liability company made or incurred prior to the  
38 effectiveness of the conversion. The cessation of the existence of the converting domestic  
39 limited liability company in its form of organization as a domestic limited liability company in  
40 the conversion shall not constitute a dissolution or termination of the converting domestic  
41 limited liability company.

42 (b) If the resulting business entity is not a domestic corporation or a domestic limited  
43 partnership, when the conversion takes effect the resulting business entity is deemed:

- 44 (1) To agree that it may be served with process in this State for enforcement of  
45 (i) any obligation of the converting domestic limited liability company and  
46 (ii) any obligation of the resulting business entity arising from the  
47 conversion; and  
48 (2) To have appointed the Secretary of State as its agent for service of process in  
49 any such proceeding. Service on the Secretary of State of any such process  
50 shall be made by delivering to and leaving with the Secretary of State, or  
51 with any clerk authorized by the Secretary of State to accept service of

1 process, duplicate copies of the process and the fee required by G.S.  
2 57C-1-22(b). Upon receipt of service of process on behalf of a resulting  
3 business entity in the manner provided for in this section, the Secretary of  
4 State shall immediately mail a copy of the process by registered or certified  
5 mail, return receipt requested, to the resulting business entity. If the resulting  
6 business entity is authorized to transact business or conduct affairs in this  
7 State, the address for mailing shall be its principal office designated in the  
8 latest document filed with the Secretary of State that is authorized by law to  
9 designate the principal office or, if there is no principal office on file, its  
10 registered office. If the resulting business entity is not authorized to transact  
11 business or conduct affairs in this State, the address for mailing shall be the  
12 mailing address designated pursuant to G.S. 57C-9A-12(a)(2). (2001-387, s.  
13 96.)  
14

15 **§§ 57C-9A-14 through 57C-9A-19. Reserved for future codification purposes.**  
16

17 Part 2. Merger.

18 **§ 57C-9A-20. Merger.**

19 A domestic limited liability company may merge with one or more other domestic limited  
20 liability companies or other business entities if:

- 21 (1) The merger is permitted by the laws of the state or country governing the  
22 organization and internal affairs of each other merging business entity; and
- 23 (2) Each merging domestic limited liability company and each other merging  
24 business entity comply with the requirements of this Part and, to the extent  
25 applicable, the laws referred to in subdivision (1) of this section. (1999-369,  
26 s. 3.7.)  
27

28 **§ 57C-9A-21. Plan of merger.**

29 (a) Each merging domestic limited liability company and each other merging business  
30 entity shall approve a written plan of merger containing:

- 31 (1) For each merging business entity, its name, type of business entity, and the  
32 state or country whose laws govern its organization and internal affairs;
- 33 (2) The name of the merging business entity that shall survive the merger;
- 34 (3) The terms and conditions of the merger;
- 35 (4) The manner and basis for converting the interests in each merging business  
36 entity into interests, obligations, or securities of the surviving business entity  
37 or into cash or other property in whole or in part; and
- 38 (5) If the surviving business entity is a domestic limited liability company, any  
39 amendments to its articles of organization that are to be made in connection  
40 with the merger.

41 (a1) The plan of merger may contain other provisions relating to the merger.

42 (a2) The provisions of the plan of merger, other than the provisions referred to in  
43 subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts  
44 objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner  
45 in which the facts will operate upon the affected provisions. The facts may include any of the  
46 following:

- 47 (1) Statistical or market indices, market prices of any security or group of  
48 securities, interest rates, currency exchange rates, or similar economic or  
49 financial data.
- 50 (2) A determination or action by the domestic limited liability company or by  
51 any other person, group, or body.

1 (3) The terms of, or actions taken under, an agreement to which the domestic  
2 limited liability company is a party, or any other agreement or document.

3 (b) In the case of a merging domestic limited liability company, the plan of merger  
4 must be approved in the manner provided in its articles of organization or a written operating  
5 agreement for approval of a merger with the type of business entity contemplated in the plan of  
6 merger, or, if there is no provision, by the unanimous consent of its members. If any member of  
7 a merging domestic limited liability company has or will have personal liability for any existing  
8 or future obligation of the surviving business entity solely as a result of holding an interest in  
9 the surviving business entity, then in addition to the requirements of the preceding sentence,  
10 approval of the plan of merger by the domestic limited liability company shall require the  
11 consent of each such member. In the case of each other merging business entity, the plan of  
12 merger must be approved in accordance with the laws of the state or country governing the  
13 organization and internal affairs of the merging business entity.

14 (c) After a plan of merger has been approved by a domestic limited liability company  
15 but before the articles of merger become effective, the plan of merger (i) may be amended as  
16 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as  
17 provided in the plan of merger, articles of organization, or written operating agreement or, if  
18 not so provided, as determined by the managers of the domestic limited liability company in  
19 accordance with G.S. 57C-3-20(b). (1999-369, s. 3.7; 2001-387, s. 97; 2001-487, s. 62(p);  
20 2005-268, s. 49.)

21  
22 **§ 57C-9A-22. Articles of merger.**

23 (a) After a plan of merger has been approved by each merging domestic limited liability  
24 company and each other merging business entity as provided in G.S. 57C-9A-21, the surviving  
25 business entity shall deliver articles of merger to the Secretary of State for filing. The articles of  
26 merger shall set forth:

27 (1) Repealed by Session Laws 2005-268, s. 50, effective October 1, 2005.

28 (2) For each merging business entity, its name, type of business entity, and the  
29 state or country whose laws govern its organization and internal affairs.

30 (3) The name of the merging business entity that will survive the merger and, if  
31 the surviving business entity is not authorized to transact business or conduct  
32 affairs in this State, a designation of its mailing address and a commitment to  
33 file with the Secretary of State a statement of any subsequent change in its  
34 mailing address.

35 (3a) If the surviving business entity is a domestic limited liability company, any  
36 amendment to its articles of organization as provided in the plan of merger.

37 (4) A statement that the plan of merger has been approved by each merging  
38 business entity in the manner required by law.

39 (5) Repealed by Session Laws 2005-268, s. 50, effective October 1, 2005.

40 If the plan of merger is amended after the articles of merger have been filed but before the  
41 articles of merger become effective, and any statement in the articles of merger becomes  
42 incorrect as a result of the amendment, the surviving business entity shall deliver to the  
43 Secretary of State for filing prior to the time the articles of merger become effective an  
44 amendment to the articles of merger correcting the incorrect statement. If the articles of merger  
45 are abandoned after the articles of merger are filed but before the articles of merger become  
46 effective, the surviving business entity shall deliver to the Secretary of State for filing prior to  
47 the time the articles of merger become effective an amendment reflecting abandonment of the  
48 plan of merger.

49 (b) A merger takes effect when the articles of merger become effective.

50 (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.  
51 (1999-369, s. 3.7; 2001-387, s. 98; 2005-268, s. 50.)

1  
2 **§ 57C-9A-23. Effects of merger.**

3 (a) When the merger takes effect:

- 4 (1) Each other merging business entity merges into the surviving business  
5 entity, and the separate existence of each merging business entity except the  
6 surviving business entity ceases;
- 7 (2) The title to all real estate and other property owned by each merging  
8 business entity is vested in the surviving business entity without reversion or  
9 impairment;
- 10 (3) The surviving business entity has all liabilities of each merging business  
11 entity;
- 12 (4) A proceeding pending by or against any merging business entity may be  
13 continued as if the merger did not occur, or the surviving business entity  
14 may be substituted in the proceeding for a merging business entity whose  
15 separate existence ceases in the merger;
- 16 (5) If a domestic limited liability company is the surviving business entity, its  
17 articles of organization shall be amended to the extent provided in the  
18 articles of merger;
- 19 (6) The interests in each merging business entity that are to be converted into  
20 interests, obligations, or securities of the surviving business entity or into the  
21 right to receive cash or other property are thereupon so converted, and the  
22 former holders of the interests are entitled only to the rights provided to  
23 them in the plan of merger or, in the case of former holders of shares in a  
24 domestic corporation, any rights they may have under Article 13 of Chapter  
25 55 of the General Statutes; and
- 26 (7) If the surviving business entity is not a domestic corporation, the surviving  
27 business entity is deemed to agree that it will promptly pay to the  
28 shareholders of any merging domestic corporation exercising appraisal rights  
29 the amount, if any, to which they are entitled under Article 13 of Chapter 55  
30 of the General Statutes and otherwise to comply with the requirements of  
31 Article 13 as if it were a surviving domestic corporation in the merger.

32 The merger shall not affect the liability or absence of liability of any holder of an interest in  
33 a merging business entity for any acts, omissions, or obligations of any merging business entity  
34 made or incurred prior to the effectiveness of the merger. The cessation of separate existence of  
35 a merging business entity in the merger shall not constitute a dissolution or termination of that  
36 merging business entity.

37 (b) If the surviving business entity is not a domestic limited liability company, a  
38 domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership,  
39 when the merger takes effect the surviving business entity is deemed:

- 40 (1) To agree that it may be served with process in this State in any proceeding  
41 for enforcement of (i) any obligation of any merging domestic limited  
42 liability company, domestic corporation, domestic nonprofit corporation,  
43 domestic limited partnership, or other partnership as defined in G.S. 59-36  
44 that is formed under the laws of this State, (ii) the appraisal rights of  
45 shareholders of any merging domestic corporation under Article 13 of  
46 Chapter 55 of the General Statutes, and (iii) any obligation of the surviving  
47 business entity arising from the merger; and
- 48 (2) To have appointed the Secretary of State as its registered agent for service of  
49 process in any such proceeding. Service on the Secretary of State of any  
50 such process shall be made by delivering to and leaving with the Secretary  
51 of State, or with any clerk authorized by the Secretary of State to accept

1 service of process, duplicate copies of such process and the fee required by  
2 G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a  
3 surviving business entity in the manner provided for in this section, the  
4 Secretary of State shall immediately mail a copy of the process by registered  
5 or certified mail, return receipt requested, to the surviving business entity. If  
6 the surviving business entity is authorized to transact business or conduct  
7 affairs in this State, the address for mailing shall be its principal office  
8 designated in the latest document filed with the Secretary of State that is  
9 authorized by law to designate the principal office or, if there is no principal  
10 office on file, its registered office. If the surviving business entity is not  
11 authorized to transact business or conduct affairs in this State, the address  
12 for mailing shall be the mailing address designated pursuant to G.S.  
13 57C-9A-22(a)(3). (1999-369, s. 3.7; 1999-456, s. 52(b); 2000-140, s. 51;  
14 2001-387, s. 99; 2005-268, s. 51; 2007-385, s. 4; 2011-347, ss. 15, 16.)  
15

16 **§§ 57C-9A-24 through 57C-9A-29. Reserved for future codification purposes.**  
17

18 Article 10.  
19 Miscellaneous.

20 **§ 57C-10-01. Execution by judicial act.**

21 Any person who is adversely affected by the failure or refusal of any person to execute and  
22 file any articles or other document to be filed under this Chapter may petition the superior court  
23 in the county where the limited liability company's principal office (or, if none in this State, its  
24 registered office) is or was last located or, if there is no such office, in the County of Wake, to  
25 direct the execution and filing of the articles or other document. If the court finds that it is  
26 proper for the articles or the document to be executed and filed and that there has been failure  
27 or refusal to execute and file the document, it shall order the Secretary of State to file the  
28 appropriate articles or other document. (1993, c. 354, s. 1.)  
29

30 **§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

31 The provisions of this Chapter shall apply to determine the rights and obligations of a  
32 limited liability company formed hereunder in commerce with foreign nations and among the  
33 several states, except as prohibited by law. (1993, c. 354, s. 1; 2001-387, s. 100.)  
34

35 **§ 57C-10-03. Rules of construction; policy.**

36 (a) The rules that statutes in derogation of the common law are to be strictly construed  
37 shall have no application to this Chapter.

38 (b) The law of estoppel shall apply to this Chapter.

39 (c) The law of agency shall apply under this Chapter.

40 (d) This Chapter shall not be construed so as to impair the obligations of any contract  
41 existing when this Chapter goes into effect, nor to affect any action or proceedings begun or  
42 right accrued before this Chapter takes effect.

43 (e) Except as otherwise provided in this Chapter, it is the policy of this Chapter to give  
44 the maximum effect to the principle of freedom of contract and to the enforceability of  
45 operating agreements. (1993, c. 354, s. 1; 2009-247, s. 8.)  
46

47 **§ 57C-10-04. Jurisdiction of the superior courts.**

48 The superior courts shall have jurisdiction to enforce the provisions of this Chapter. (1993,  
49 c. 354, s. 1.)  
50

51 **§ 57C-10-05. Rules for cases not provided for in this Chapter.**

1 In any case not provided for in this Chapter, the rules of law and equity shall govern. (1993,  
2 c. 354, s. 1.)

3  
4 **§ 57C-10-06. Income taxation.**

5 A limited liability company, a foreign limited liability company authorized to transact  
6 business in this State, and a member of one of these companies are subject to taxation under  
7 Article 4 of Chapter 105 of the General Statutes in accordance with their classification for  
8 federal income tax purposes. Accordingly, if a limited liability company or a foreign limited  
9 liability company authorized to transact business in this State is classified for federal income  
10 tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined  
11 in G.S. 105-131(b)(8), the company and its members are subject to tax under Article 4 of  
12 Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation,  
13 as the case may be, and its shareholders. If a limited liability company or a foreign limited  
14 liability company authorized to transact business in this State is classified for federal income  
15 tax purposes as a partnership, the company and its members are subject to tax under Article 4  
16 of Chapter 105 of the General Statutes to the same extent as a partnership and its members. If a  
17 limited liability company or a foreign limited liability company authorized to transact business  
18 in this State is classified for federal income tax purposes as other than a corporation or a  
19 partnership, the company and its members are subject to tax under Article 4 of Chapter 105 of  
20 the General Statutes in a manner consistent with that classification. This section does not  
21 require a limited liability company or a foreign limited liability company to obtain an  
22 administrative ruling from the Internal Revenue Service on its classification under the Internal  
23 Revenue Code. (1993, c. 354, s. 1; 2001-387, s. 101.)

24  
25 **§ 57C-10-07. Intent.**

26 It is the intent of the General Assembly that the legal existence of limited liability  
27 companies formed under this Chapter be recognized outside the boundaries of this State and  
28 that, subject to any reasonable requirement of registration, a domestic limited liability company  
29 transacting business outside this State be granted full faith and credit under Section 1 of Article  
30 IV of the Constitution of the United States. (1993, c. 354, s. 1; 2001-387, s. 102.)