

## Article 2.

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

#### Part 1. Purposes and Powers.

##### **§ 57D-2-01. Nature, purposes, duration, existence.**

- (a) An LLC is an entity distinct from its interest owners.
- (b) An LLC has perpetual duration.
- (c) Subject to subsection (d) of this section, an LLC may engage in any lawful business.
- (d) A limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter if not precluded by the other statute and is otherwise subject to the application of the other statute, which in the case of a limited liability company rendering a professional service requires giving effect to G.S. 57D-2-02.
- (e) After the dissolution of an LLC, the LLC continues its existence but shall wind up pursuant to G.S. 57D-6-07. (2013-157, s. 2.)

##### **§ 57D-2-02. Professional limited liability companies.**

(a) Except as set forth in this subsection, a limited liability company may engage in rendering professional services only to the extent that it would be able to render those services were it a corporation, including, as applicable, complying with Chapter 55B of the General Statutes and the statutes referenced in the definition of "professional service" in G.S. 55B-2(6). Chapter 55B of the General Statutes and each statute referenced therein are deemed amended and to apply with such changes as are necessary to cause them to be applicable to limited liability companies in the same degree as for corporations but subject to any provisions contained herein pursuant to which limited liability companies, or their members, managers, and other company officials, are treated differently from corporations, or their shareholders, directors, and officers.

For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the statutes referenced therein to limited liability companies that engage in rendering professional services, unless the context specifically requires otherwise, the following rules of construction shall apply:

- (1) References to Chapter 55 of the General Statutes are treated as references to this Chapter, and references to a "corporation" or "foreign corporation" are treated as references to an LLC or foreign LLC, respectively.
- (2) References to "articles of incorporation" are treated as references to articles of organization.
- (3) The persons executing the articles of organization of an LLC are treated in the same manner as the incorporators of a professional corporation.
- (4) References to "directors" are treated as references to company officials having equal or greater authority in the management of a limited liability company as directors of a domestic corporation or foreign corporation, as the case may be.
- (5) References to "officers" are treated as references to company officials whose authority to manage the limited liability company is equal to or greater than that exercised by officers of a domestic corporation.
- (6) A professional limited liability company is not required to have more than one company official who would be treated as a director, officer, or both under Chapter 55B of the General Statutes.

- (7) A manager or other company official who has the authority of both a director and an officer if the limited liability were a company or a corporation is to be treated as holding both positions for purposes of applying Chapter 55B of the General Statutes to the limited liability company.
- (8) References to "shares" of a shareholder are treated as references to the ownership interest of an interest owner and, where the context so indicates or requires, a portion of an interest owner's ownership interest.
- (9) References to "shareholders" are treated as references to interest owners.
- (10) The name of a limited liability company that is to render a professional service and is subject to this section shall comply with Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC."

(b) Nothing in this Chapter abolishes, modifies, restricts, limits, or alters the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A member, manager, or other company official of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager, or other company official, employee, agent, or other representative of the professional limited liability company, except nothing in this Chapter affects the liability of a member, manager, or other company official of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. (2013-157, s. 2.)

**§ 57D-2-03. Powers of the LLC.**

Unless this Chapter provides otherwise or the powers of the LLC are limited under the operating agreement, an LLC has the same powers as an individual or a domestic corporation to do all things necessary or convenient to carry out its business. (2013-157, s. 2.)

**§ 57D-2-04:** Reserved for future codification purposes.

**§ 57D-2-05:** Reserved for future codification purposes.

**§ 57D-2-06:** Reserved for future codification purposes.

**§ 57D-2-07:** Reserved for future codification purposes.

**§ 57D-2-08:** Reserved for future codification purposes.

§ 57D-2-09: Reserved for future codification purposes.

§ 57D-2-10: Reserved for future codification purposes.

§ 57D-2-11: Reserved for future codification purposes.

§ 57D-2-12: Reserved for future codification purposes.

§ 57D-2-13: Reserved for future codification purposes.

§ 57D-2-14: Reserved for future codification purposes.

§ 57D-2-15: Reserved for future codification purposes.

§ 57D-2-16: Reserved for future codification purposes.

§ 57D-2-17: Reserved for future codification purposes.

§ 57D-2-18: Reserved for future codification purposes.

§ 57D-2-19: Reserved for future codification purposes.

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

**§ 57D-2-20. Formation.**

(a) One or more persons may cause an LLC to be formed by delivering executed articles of organization to the Secretary of State for filing in accordance with this Chapter and Chapter 55D of the General Statutes. An LLC may also be formed through the conversion of another eligible entity into an LLC pursuant to Part 2 of Article 9 of this Chapter.

(b) An LLC is formed at the time the articles of organization filed by the Secretary of State become effective. Filing of the articles of organization by the Secretary of State is conclusive proof that all conditions to the formation of the LLC have been satisfied except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the LLC.

(c) If initial members are not identified in the articles of organization of an LLC in the manner provided in G.S. 57D-3-01(a)(1), the organizer or organizers shall either identify the initial members of the LLC or dissolve the LLC. Unless otherwise provided in the articles of organization, all decisions to be made by the organizers require the approval of a majority of the organizers. (2013-157, s. 2.)

**§ 57D-2-21. Articles of organization.**

- (a) The articles of organization must include the following information:
- (1) A name of the LLC that satisfies the provisions of G.S. 55D-20 and G.S. 55D-21.
  - (2) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer.
  - (3) The street address, and the mailing address if different from the street address, of the LLC's initial registered office, the county in which the initial registered office is located, and the name of the LLC's initial registered agent at that address.
  - (4) The street address, and the mailing address if different from the street address, of the LLC's principal office, if any, and the county in which the principal office, if any, is located.
  - (5) If the LLC is to render professional services and is subject to G.S. 57D-2-02 as a professional limited liability company, the professional services to be rendered by the LLC.
- (b) The articles of organization may include any other provision that is or may be included in an operating agreement. (2013-157, s. 2.)

**§ 57D-2-22. Amendment of articles of organization.**

(a) An LLC may amend its articles of organization to add or change a provision that is required or permitted in the articles of organization or to delete a provision that is not required to be included in the articles of organization. Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment. The LLC shall amend or otherwise correct its articles of organization when (i) there is a change in the name of the LLC or (ii) they contain an inaccurate statement.

(b) Any amendment to the articles of organization must be approved by either of the following:

- (1) All of the members.
- (2) If no member of the LLC has been identified in the manner provided in this Chapter, a majority of the organizers. (2013-157, s. 2.)

**§ 57D-2-23. Restated articles of organization.**

(a) An LLC may restate its articles of organization at any time.

(b) The restated articles of organization may include one or more amendments to the articles of organization. The restated articles of organization shall include a statement of the address of the current registered office and the name of the current registered agent of the LLC.

(c) An LLC restating its articles of organization must deliver to the Secretary of State for filing articles of restatement that include the following:

- (1) The name of the LLC.
- (2) Attached as an exhibit thereto, the text of the restated articles of organization.
- (3) A statement that the restated articles of organization do not contain an amendment or, if the articles of organization do contain an amendment, a statement that there is an amendment that was duly adopted by the LLC.

(d) Restated articles of organization supersede the original articles of organization as theretofore amended.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect without including the other information required by subsection (c) of this section. (2013-157, s. 2.)

**§ 57D-2-24. Annual report for Secretary of State.**

(a) Excluding professional limited liability companies governed by G.S. 57D-2-02, each LLC and each foreign LLC authorized to transact business in this State must deliver to the Secretary of State for filing annual reports on a form prescribed by, and in the manner required by, the Secretary of State and as otherwise provided in subsection (b) of this section. Each annual report must specify the year for which the report applies and provide the information required by this subsection. The information must be current as of the date the limited liability company completes the report. If the information in the limited liability company's most recent annual report has not changed, the limited liability company may certify in its annual report that the information has not changed in lieu of restating the information.

The following information must be included in each annual report:

- (1) The name of the limited liability company and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.
- (2) In the case of a foreign LLC, the name of the jurisdiction under whose law the foreign LLC is organized.
- (3) The street address, and the mailing address if different from the street address, of the limited liability company's registered office in the State, the county in which the registered office is located, the name of its registered agent at that office, and a statement of any change of the registered office or registered agent.
- (4) The address and telephone number of its principal office.
- (5) The names, titles, and business addresses of the limited liability company's principal company officials.
- (6) A brief description of the nature of its business.

(a1) The Secretary of State shall also provide appropriate space and instructions on the annual report form for a limited liability company to voluntarily indicate whether or not it is a veteran-owned small business or a service-disabled veteran-owned small business.

(b) The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report of a limited liability company is due to be delivered to the Secretary of State by April 15 of the year following (i) in the case of an LLC, the calendar year in which the LLC's articles of organization or articles of organization and conversion filed by the Secretary of State become effective or (ii) in the case of a foreign LLC, the calendar year in which the Secretary of State issues to the foreign LLC a certificate of authority to transact business in this State.

The limited liability company shall deliver an annual report by April 15 of each subsequent year until (i) in the case of an LLC, the effective date of its articles of dissolution filed by the Secretary of State or the effective date of either a certificate of dissolution for an LLC that is not reinstated under G.S. 57D-6-06(c) or a decree of dissolution that is filed by the Secretary of State as provided in G.S. 57D-6-05; (ii) in the case of a foreign LLC, the foreign LLC receives a

certificate of withdrawal from the Secretary of State or the Secretary of State revokes the foreign LLC's certificate of authority under Part 3 of Article 7 of this Chapter; or (iii) in the case of either an LLC or foreign LLC, the effective date of a merger or conversion under Article 9 of this Chapter in which the limited liability company is a merging entity or a converting entity but not the surviving entity.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely delivered.

(d) Amendments to any previously filed annual report may be delivered for filing by the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report. (2013-157, s. 2; 2017-90, s. 2(a).)

**§ 57D-2-25. Report of veteran-owned small businesses and service-disabled veteran-owned small businesses.**

Using the information reported pursuant to G.S. 57D-2-24(a1), the Secretary of State shall compile summary information on an aggregate basis about the number of veteran-owned small businesses and the number of service-disabled veteran-owned small businesses reporting in this State. The Secretary of State shall annually report this summary information to the Department of Military and Veterans Affairs by March 1 of each year. (2017-90, s. 2(b).)

§ 57D-2-26: Reserved for future codification purposes.

§ 57D-2-27: Reserved for future codification purposes.

§ 57D-2-28: Reserved for future codification purposes.

§ 57D-2-29: Reserved for future codification purposes.

Part 3. Operating Agreement.

**§ 57D-2-30. Scope, function, and limitations of operating agreements.**

(a) The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners. Subject to the limitations set forth in subsections (b), (c), (d), and (e) of this section, the provisions of this Chapter and common law will apply only to the extent contrary or inconsistent provisions are not made in, or are not otherwise supplanted, varied, disclaimed, or nullified by, the operating agreement. The provisions of the operating agreement are severable and each will apply to the extent it is valid and enforceable.

(b) The operating agreement may not do any of the following:

- (1) Supplant, vary, disclaim, or nullify the provisions of this Chapter or their application to the extent the provisions:
  - a. Concern the functions of, including the filings and payments to be made, and the manner in which they are to be made by or to the Secretary of State, the Attorney General, the courts, or any other governmental official, agency, or authority, including Articles 1 and 9 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a), 57D-2-23, 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a) through (c), 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating agreement may provide the forum in which disputes concerning the LLC or the rights and duties of interest owners and other parties to the operating agreement are to be resolved and other decisions and the manner in which decisions of interest owners and other parties to the operating agreement are to be made.
  - b. Apply to persons who are not parties to or otherwise bound by the operating agreement, including the extent to which G.S. 57D-5-03 may be applicable to such persons or for which they may be entitled to recovery or other relief thereunder, or the extent to which G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-6-12, and 57D-6-13 are applicable to such persons.
  - c. Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02, 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of 57D-6-02(2), and 57D-6-07(b) and (f).
- (2) Recodified as G.S. 57D-2-30(b)(1)b.
- (3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and G.S. 57D-4-06.
- (4) Diminish the rights and protections of members under G.S. 57D-3-04(a), except as permitted by and otherwise subject to subsections (b) through (f) of G.S. 57D-3-04.
- (5) Eliminate the right of a member to bring a derivative action under Article 8 of this Chapter unless the operating agreement provides an alternative remedy, which may include the right to bring a direct action in lieu of a derivative action or modifying the procedures provided in Article 8 of this Chapter governing derivative actions.
- (6) Eliminate the right of a member to bring an action to have the LLC judicially dissolved under clause (i) in G.S. 57D-6-02(2), unless the operating agreement provides an alternative remedy.
- (7) Recodified as G.S. 57D-2-30(b)(1)c.
- (c) Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions in the operating agreement to the detriment of the rights of persons who are not parties to the operating agreement to the extent that they reasonably rely on those written provisions in the operating agreement.
- (d) In the event of a conflict between the operating agreement and a provision in any document of an LLC filed by the Secretary of State:
  - (1) The operating agreement shall prevail as to parties to the operating agreement and company officials.

(2) The document filed by the Secretary of State shall prevail as to persons who are not parties to the operating agreement and are not company officials to the extent that they reasonably rely on the document filed by the Secretary of State.

(e) Except as provided in or permitted by this Chapter or other applicable law, the laws of agency and contract, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of an operating agreement not be unconscionable at the time they are made, govern the administration and enforcement of operating agreements. (2013-157, s. 2; 2016-114, ss. 1(a), (b), (c), 2.)

**§ 57D-2-31. Parties to, and other persons subject to or having rights under, the operating agreement.**

(a) The LLC is deemed to be a party to the operating agreement and, therefore, is bound by and may enforce the provisions thereunder applicable to the LLC.

(b) A person who becomes an interest owner is deemed to assent to, and is bound by, and, subject to Article 5 of this Chapter, is entitled to the rights applicable to the interest owner's ownership interest provided under, and is otherwise deemed to be a party to, the operating agreement.

(c) A person need not be an interest owner to be a party to the operating agreement.

(d) An operating agreement may require amendments to the operating agreement be approved by persons who are not interest owners and may provide rights to persons who are not interest owners and not otherwise parties to the operating agreement.

(e) Any person bound by the operating agreement is bound by any amendment adopted, as provided in the operating agreement. (2013-157, s. 2.)

**§ 57D-2-32. Remedies for breach of operating agreement or occurrence of identified events; reliance on operating agreement.**

(a) An operating agreement may subject interest owners and other persons who are parties to or otherwise bound by the operating agreement to specified remedies for breach of the operating agreement or the occurrence of a specified event. Such remedies may include the recovery of reasonable attorneys' fees, the assessment of interest without the assessment being subject to the laws of usury, and the imposition of penalties that would otherwise be unenforceable as stipulated or liquidated damages.

(b) Unless otherwise provided in the operating agreement, an interest owner or other person who is a party to or bound by the operating agreement will not be liable to the LLC or an interest owner or other person who is a party to the operating agreement for that person's reliance on the provisions of the operating agreement. (2013-157, s. 2.)

**§ 57D-2-33:** Reserved for future codification purposes.

**§ 57D-2-34:** Reserved for future codification purposes.

**§ 57D-2-35:** Reserved for future codification purposes.



§ 57D-2-36: Reserved for future codification purposes.

§ 57D-2-37: Reserved for future codification purposes.

§ 57D-2-38: Reserved for future codification purposes.

§ 57D-2-39: Reserved for future codification purposes.

#### Part 4. Registered Office and Registered Agent.

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

Each LLC must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article. (2013-157, s. 2.)

§ 57D-2-41: Reserved for future codification purposes.

§ 57D-2-42: Reserved for future codification purposes.

§ 57D-2-43: Reserved for future codification purposes.

§ 57D-2-44: Reserved for future codification purposes.

§ 57D-2-45: Reserved for future codification purposes.

§ 57D-2-46: Reserved for future codification purposes.

§ 57D-2-47: Reserved for future codification purposes.

§ 57D-2-48: Reserved for future codification purposes.

§ 57D-2-49: Reserved for future codification purposes.