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### Title 48 Chapter 02: Limited Partnership - 1994

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NOTES TO DECISIONS

ANALYSIS

Existence of partnership.  
Laches.

**Existence of partnership.**

In action for accounting against executors of estate of deceased, there was substantial evidence of existence of partnership between plaintiff and deceased so that court erred in nonsuiting plaintiff. *Kimball v. McCornick*, 70 Utah 189, 259 P. 313 (1927).

**Laches.**

In action by administrator of wife for partnership accounting with respect to personal property, wherein it appeared that for period of 37 years after personal property came into

hands of husband on death of wife, no claim or demand whatever was made by interested parties for its recovery or for an accounting with respect thereto, held that wife's administrator was barred by laches from maintaining this suit. *Walton v. Broadhead*, 54 Utah 320, 180 P. 433 (1919).

Delay of several years between partner's death and action for an accounting did not require application of laches because relationship between surviving partner and deceased partner's son, who was carrying on business, was a confidential one, surviving partner did not know about disputed payments, and delay did not prejudice defendants. *Bankers' Trust Co. v. Riter*, 60 Utah 1, 206 P. 276 (1922).

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 968 to 970, 1175, 1176, 1045 to 1060.  
**C.J.S.** — 68 C.J.S. Partnership § 378.  
**A.L.R.** — When statute of limitations com-

mences to run on right of partnership accounting, 44 A.L.R.4th 678.

**Key Numbers.** — Partnership ⇌ 298.

## CHAPTER 2 LIMITED PARTNERSHIP

(Repealed by Laws 1990, ch. 233, § 71.)

### 48-2-1 to 48-2-27. Repealed.

**Repeals.** — Laws 1990, ch. 233, § 71 repeals §§ 48-2-1 to 48-2-12, Utah Code Annotated 1953; § 48-2-13, as amended by Laws 1975, ch. 139, § 1; and §§ 48-2-14 to 48-2-27, Utah Code Annotated 1953; all relating to limited part-

nerships, effective April 23, 1990. For present comparable provisions, see Chapter 2a of this title. See also § 48-2a-1104 as to applicability of former law, and § 48-2a-1106 (savings clause).

## CHAPTER 2a UTAH REVISED UNIFORM LIMITED PARTNERSHIP ACT

**Effective Dates.** — Section 48-2a-1104 provides that, with certain exceptions, the effective date of this chapter is July 1, 1990.

Article I		Section	
<b>General Provisions</b>		48-2a-103.	Reservation of name.
		48-2a-103.5.	Limited partnership name — Limited rights.
Section		48-2a-104.	Registered agent.
48-2a-101.	Definitions.	48-2a-105.	Records to be kept.
48-2a-102.	Name.		

## PARTNERSHIP

### Section

- 48-2a-106. Nature of business.
- 48-2a-107. Business transactions of partner with partnership.

### Article II

#### Certificates of Limited Partnership

- 48-2a-201. Certificate of limited partnerships.
- 48-2a-202. Amendment to certificate.
- 48-2a-203. Voluntary cancellation of certificate.
- 48-2a-203.5. Involuntary cancellation of certificate.
- 48-2a-204. Execution of certificates.
- 48-2a-205. Execution by judicial act.
- 48-2a-206. Filing with the division.
- 48-2a-207. Liability for false statement in certificate.
- 48-2a-208. Scope of notice.
- 48-2a-209. Delivery of certificates to limited partners.
- 48-2a-210. Annual report.

### Article III

#### Limited Partners

- 48-2a-301. Admission of additional limited partners.
- 48-2a-302. Voting.
- 48-2a-303. Liability to third parties.
- 48-2a-304. Person erroneously believing himself to be a limited partner.
- 48-2a-305. Inspection of records — Right to information.

### Article IV

#### General Partners

- 48-2a-401. Admission of additional general partners.
- 48-2a-402. Events of withdrawal.
- 48-2a-403. General powers and liabilities.
- 48-2a-404. Contributions by general partners.
- 48-2a-405. Voting.

### Article V

#### Finance

- 48-2a-501. Form of contribution.
- 48-2a-502. Liability for contribution.
- 48-2a-503. Sharing of profits and losses.
- 48-2a-504. Sharing of distributions.

### Article VI

#### Distributions and Withdrawal

- 48-2a-601. Interim distributions.
- 48-2a-602. Withdrawal of general partner.
- 48-2a-603. Withdrawal of limited partners.
- 48-2a-604. Distribution upon withdrawal.

### Section

- 48-2a-605. Distribution in kind.
- 48-2a-606. Right to distribution.
- 48-2a-607. Limitations on distributions.
- 48-2a-608. Liability upon return of contribution.

### Article VII

#### Assignment of Partnership Interests

- 48-2a-701. Nature of partnership interest.
- 48-2a-702. Assignment of partnership interest.
- 48-2a-703. Rights of creditor.
- 48-2a-704. Right of assignee to become limited partner.
- 48-2a-705. Power of estate of deceased or incompetent partner.

### Article VIII

#### Dissolution

- 48-2a-801. Nonjudicial dissolution.
- 48-2a-802. Judicial dissolution.
- 48-2a-803. Winding up.
- 48-2a-804. Distribution of assets.

### Article IX

#### Foreign Limited Partnerships

- 48-2a-901. Law governing.
- 48-2a-902. Registration.
- 48-2a-903. Issuance of registration.
- 48-2a-904. Name.
- 48-2a-905. Changes and amendments.
- 48-2a-906. Cancellation of registration.
- 48-2a-907. Transaction of business without registration.
- 48-2a-908. Action by director of division.

### Article X

#### Derivative Actions

- 48-2a-1001. Right of action.
- 48-2a-1002. Proper plaintiff.
- 48-2a-1003. Pleading.
- 48-2a-1004. Expenses.
- 48-2a-1005. Security and costs.
- 48-2a-1006. Indemnification of a general partner.

### Article XI

#### Miscellaneous

- 48-2a-1101. Construction and application.
- 48-2a-1102. Short title.
- 48-2a-1103. Severability.
- 48-2a-1104. Effective date — Extended effective date — Applicability of former law.
- 48-2a-1105. Rules for cases not provided for in this chapter.
- 48-2a-1106. Savings clause.
- 48-2a-1107. Fees.

**ARTICLE I**  
**GENERAL PROVISIONS**

**48-2a-101. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 48-2a-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 48-2a-402.

(5) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(9) "Partner" means a limited or a general partner.

(10) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(11) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(12) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

**History:** C. 1953, 48-2a-101, enacted by L. 1990, ch. 233, § 1; 1991, ch. 189, § 1.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, made a stylistic change in Subsection (4) and added Subsections (12) and (13).

**Uniform Laws.** — Jurisdictions that have enacted the Revised Uniform Limited Partner-

ship Act are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Da-

kota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washing-

ton, West Virginia, Wisconsin, and Wyoming.  
**Effective Dates.** — See § 48-2a-1104.

#### COLLATERAL REFERENCES

**Brigham Young Law Review.** — Independent Motion Picture Financing: Unregistered

Limited Partnership Offerings, 1989 B.Y.U.L. Rev. 1287.

### 48-2a-102. Name.

(1) The name of each limited partnership as set forth in its certificate of limited partnership:

- (a) shall contain the words "limited partnership," "limited," "L.P.," or "Ltd.";
- (b) may not contain the name of a limited partner unless:
  - (i) it is also the name of a general partner or the corporate name of a corporate general partner; or
  - (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (c) may not contain the words "association," "corporation," or "incorporated," or any abbreviation thereof, or any words or any abbreviation thereof which are of like import in any other language; and
- (d) may not, without the written consent of the United States Olympic Committee, contain the words "Olympic," "Olympiad," or "Citius Altius Fortius."

(2) No person or entity other than a limited partnership formed or registered under this title may use any of the terms "limited," "limited partnership," "Ltd.," or "L.P." in its name in this state except that any foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if "corporation," "incorporated," or any abbreviation of them is also used. Notwithstanding any of the preceding provisions of Subsection 48-2a-102(2), a limited liability company may use the terms "limited," "limited company," or "L.C." in its name in this state.

(3) Except as authorized by Subsection (4), the name of a limited partnership must be distinguishable as defined in Subsection (5) upon the records of the division from:

- (a) the name of any limited partnership formed or authorized to transact business in this state;
- (b) the corporate name of any corporation incorporated or authorized to transact business in this state;
- (c) any limited partnership name reserved under this chapter;
- (d) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- (e) any fictitious name adopted by a foreign corporation or limited partnership authorized to transact business in this state because its real name is unavailable;
- (f) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
- (g) any assumed business name, trademark, or service mark registered by the division.

(4) A limited partnership may apply to the division for approval to file its certificate under, or to reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3). The division shall approve of the name for which application is made if:

(a) the other person whose name is not distinguishable from the name under which the applicant desires to file consents to the filing in writing and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records. Differences between singular and plural forms of words are distinguishing.

(6) The following differences are not distinguishing:

(a) the words "corporation," "incorporated," "company," "limited partnership," "limited," "L.P.," or "Ltd.," or any abbreviation thereof;

(b) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(c) differences in punctuation and special characters; or

(d) differences in capitalization.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that the limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

**History:** C. 1953, 48-2a-102, enacted by L. 1990, ch. 233, § 2; 1991, ch. 189, § 2; 1991, ch. 258, § 1; 1992 (3rd S.S.), ch. 6, § 15.

**Amendment Notes.** — The 1991 amendment by ch. 189, effective April 29, 1991, deleted former Subsection (1)(c), requiring that the name of each limited partnership as set forth in its certificate of limited partnership be distinguishable from all names and trademarks registered or reserved with the division; redesignated former Subsection (1)(d) as Subsection (1)(c); added Subsection (1)(d) and made a related change; and added Subsections (3) through (8).

The 1991 amendment by ch. 258, effective July 1, 1991, in Subsection (2), substituted "title" for "chapter" in the first sentence, added the second sentence, and made stylistic changes.

The 1992 (3rd S.S.) amendment, effective July 1, 1992, substituted "Title 16, Chapter 10a, Utah Revised Business Corporation Act" for "the Utah Business Corporation Act" in Subsection (3)(d).

**Applicability.** — Section 48-2a-1104(3) provides that "Section 48-2a-102(1)(a) applies only to limited partnerships formed or qualified after July 1, 1990."

**Effective Dates.** — Section 48-2a-1104(1) provides that the effective date of this chapter is July 1, 1990, but that the existing provisions for the execution and filing of certificates of limited partnerships continue in effect with respect to preexisting limited partnerships until January 1, 1991, and that § 48-2a-102 is not effective with respect to such preexisting limited partnerships until January 1, 1991.

## COLLATERAL REFERENCES

**Brigham Young Law Review.** — Utah's Business Name Statutes: "An Open Invitation to Litigation," 1983 B.Y.U. L. Rev. 795.

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1254, 1255.

**C.J.S.** — 68 C.J.S. Partnership § 462.  
**Key Numbers.** — Partnership ⇌ 358.

**48-2a-103. Reservation of name.**

- (1) The exclusive right to a name may be reserved by:
- (a) any person intending to organize a limited partnership under this chapter and to adopt that name;
  - (b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;
  - (c) any foreign limited partnership intending to register in this state and intending to adopt that name; and
  - (d) any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.
- (2) The reservation shall be made by filing with the division an application, executed under penalty of perjury by the applicant, to reserve a specified name. If the division finds that the name is available for use by a domestic or a foreign limited partnership, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days. The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

**History:** C. 1953, 48-2a-103, enacted by L. 1990, ch. 233, § 3; 1991, ch. 189, § 3.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, inserted the third sentence in Subsection (2).

**48-2a-103.5. Limited partnership name — Limited rights.**

The authorization to file a certificate under or to reserve or register a limited partnership name as granted by the division does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name.

**History:** C. 1953, 48-2a-103.5, enacted by L. 1991, ch. 189, § 4.

**Effective Dates.** — Laws 1991, ch. 189 be-

came effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

**48-2a-104. Registered agent.**

(1) Each limited partnership shall continuously maintain in this state an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

(2) The registered agent of a limited partnership may resign by filing an original and one copy of a signed written notice of resignation with the division. The division shall then mail a copy of the notice of resignation to the general partners of the limited partnership at the addresses set forth in the limited partnership's certificate. The appointment of the registered agent ends 30 days after the division receives notice of the resignation.

**History:** C. 1953, 48-2a-104, enacted by L. 1990, ch. 233, § 4; 1991, ch. 189, § 5.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, assigned the Subsection (1) designation and added Subsection (2).

**48-2a-105. Records to be kept.**

Each limited partnership shall keep at its principal place of business, as specified in the certificate of limited partnership required by Section 48-2a-201, the following:

(1) a current list in alphabetical order of the full name and last known business address of each partner, separately identifying the general partners and the limited partners;

(2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with the executed copies of any powers of attorney pursuant to which the certificate has been executed;

(3) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(4) copies of any then effective written limited partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) unless contained in a written partnership agreement, a writing setting out:

(a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(b) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(c) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any of the partner's contribution; and

(d) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

**History:** C. 1953, 48-2a-105, enacted by L. 1990, ch. 233, § 5; 1991, ch. 189, § 6.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, deleted former Subsection (2), requiring that records kept under this section be subject to inspection and

copying at the request and expense of any partner during ordinary business hours, and redesignated the Subsection designations throughout the section.

**Effective Dates.** — Section 48-2a-1104(1) provides that the effective date of this chapter



is July 1, 1990, but that the existing provisions for the execution and filing of certificates of limited partnerships continue in effect with respect to preexisting limited partnerships until

January 1, 1991, and that § 48-2a-105 is not effective with respect to such preexisting limited partnerships until January 1, 1991.

### 48-2a-106. Nature of business.

A limited partnership may carry on any business, except as otherwise prohibited by applicable provision of the Utah Code.

**History:** C. 1953, 48-2a-106, enacted by L. 1990, ch. 233, § 6.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership § 1241.

**C.J.S.** — 68 C.J.S. Partnership § 463.  
**Key Numbers.** — Partnership ⇌ 351½.

### 48-2a-107. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

**History:** C. 1953, 48-2a-107, enacted by L. 1990, ch. 233, § 7.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1308, 1309.

**C.J.S.** — 68 C.J.S. Partnership § 471.  
**Key Numbers.** — Partnership ⇌ 366.

## ARTICLE II

### CERTIFICATES OF LIMITED PARTNERSHIP

#### 48-2a-201. Certificate of limited partnerships.

(1) In order to form a limited partnership a certificate of limited partnership must be executed and filed with the division. The certificate shall set forth:

- (a) the name of the limited partnership;
- (b) the name, street address, and signature of the agent for service of process required to be maintained by Section 48-2a-104;
- (c) a statement that the director of the division is appointed the agent of the limited partnership for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;
- (d) the street address of the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are to be kept;

- (e) the name and business address of each general partner;
- (f) the latest date upon which the limited partnership is to dissolve;
- and
- (g) any other matters the general partners determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership with the division as evidenced by the stamped copy returned by the division pursuant to Subsection 48-2a-206(1), or at any later time specified in the certificate of limited partnership.

**History:** C. 1953, 48-2a-201, enacted by L. 1990, ch. 233, § 8; 1991, ch. 189, § 7.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, in Subsection (1)(b), inserted "and signature" and made a related punctuation change; in Subsection (1)(c), substituted "the agent has resigned" for "no agent has been appointed under Subsection (2) or, if appointed" and made a related stylistic change; inserted "street" before "address" near the beginning of Subsection (d); and substi-

tuted "Section 48-2a-206(1)" for "Section 48-2a-204" in Subsection (2).

**Effective Dates.** — Section 48-2a-1104(1) provides that the effective date of this chapter is July 1, 1990, but that the existing provisions for the execution and filing of certificates of limited partnerships continue in effect with respect to preexisting limited partnerships until January 1, 1991, and that § 48-2a-201 is not effective with respect to such preexisting limited partnerships until January 1, 1991.

NOTES TO DECISIONS

ANALYSIS

Failure to file.

—Controversy between partners.

Liability of partners.

Private agreement.

Failure to file.

—Controversy between partners.

In a controversy between the partners themselves, the failure to file a certificate of limited partnership does not affect the existence of the limited partnership as an entity, when the interests of third parties are not involved and where there is no partner's claim of limited liability. *Rond v. Yeaman-Yordan-Hale Prods.*, 681 P.2d 1240 (Utah 1984).

Liability of partners.

Partners who failed to comply with the former Limited Partnership Act were liable as general partners and were jointly and severally liable for a partial failure of consideration paid by the partnership for stock. *Bergeson v. Life Ins. Corp. of Am.*, 265 F.2d 227 (10th Cir.), cert. denied, 360 U.S. 932, 79 S. Ct. 1452, 3 L. Ed. 2d 1545 (1959).

Private agreement.

When a partnership is created, an agreement between its partners limiting liability is not binding on third parties. Were it otherwise, partners could, by private agreement between themselves, obtain the advantages of limited partnership without complying with the statutory requirements. *Mud Control Labs. v. Covey*, 2 Utah 2d 85, 269 P.2d 854 (1954).

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1249 to 1269.

**C.J.S.** — 68 C.J.S. Partnership §§ 453 to 461.

**48-2a-202. Amendment to certificate.**

(1) A certificate of limited partnership is amended by filing a certificate of amendment with the division. The certificate of amendment shall set forth:

- (a) the name of the limited partnership;
- (b) the date of filing the certificate; and
- (c) the amendment to the certificate.

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(2) Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (a) the admission of a new general partner;
- (b) the withdrawal of a general partner;
- (c) the continuation of the business under Section 48-2a-801 after an event of withdrawal of a general partner;
- (d) a change of the registered agent required to be maintained by Section 48-2a-104; or
- (e) a change of the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are kept.

(3) A general partner who knows or reasonably should know that any statement in a certificate of limited partnership or a certificate of amendment to a certificate of limited partnership was false at the time the certificate was executed or that any arrangement or other fact described in the certificate have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(5) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in Subsection (2) if the amendment is filed within the 30 days specified in Subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

**History:** C. 1953, 48-2a-202, enacted by L. 1990, ch. 233, § 9; 1991, ch. 189, § 8.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted the language beginning "who knows" and ending

with "in the certificate" for "becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described" in Subsection (3).

### 48-2a-203. Voluntary cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed with the division and shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

**History:** C. 1953, 48-2a-203, enacted by L. 1990, ch. 233, § 10; 1991, ch. 189, § 9.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, substituted "the completion" for "the commencement" in the first sentence of the introductory paragraph.

COLLATERAL REFERENCES

Am. Jur. 2d. — 59A Am. Jur. 2d Partnership §§ 1270 to 1274, 1402 to 1407.

C.J.S. — 68 C.J.S. Partnership § 460.  
Key Numbers. — Partnership ⇌ 354.

**48-2a-203.5. Involuntary cancellation of certificate.**

(1) A certificate of limited partnership may be canceled involuntarily by a decree of a district court having competent jurisdiction upon petition by the director of the division, or by a party in interest who shall have standing to bring such an action, when it is established that:

(a) the limited partnership procured the issuance of a stamped copy of its certificate of limited partnership or the execution thereof through fraud, in which case the certificate shall be canceled as of the date of its filing; or

(b) the limited partnership has continually exceeded or abused the authority conferred upon it by law or by the partnership agreement.

(2) A domestic limited partnership or a foreign limited partnership registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) The division shall mail a notice of delinquency of each delinquent limited partnership to the general partners of the limited partnership at the addresses set forth in the limited partnership's certificate, unless the limited partnership's certificate or registration is already suspended for any reason. The notice of delinquency shall state the nature of the delinquency and shall state that the limited partnership shall be suspended, unless it corrects the delinquency and pays a notification fee within 30 days of the mailing of the notice of delinquency. The notice shall further state that a suspended limited partnership may be reinstated only after payment of a reinstatement fee. A notice of delinquency shall be mailed first-class, postage prepaid. The division shall include with the notice any forms necessary to correct the delinquency. The division shall assess the limited partnership a notification fee as determined under Section 48-2a-1107.

(4) A domestic limited partnership or a foreign limited partnership registered in this state that remains delinquent for more than 30 days after mailing of the notice of delinquency under this section shall be suspended. If a limited partnership is suspended under this section, the division shall mail a notice of suspension to the general partners of the limited partnership at the addresses set forth in the limited partnership's certificate, unless the limited partnership's certificate or registration is already suspended for any reason. A notice of suspension shall state:

(a) that the certificate or registration has been suspended;

(b) the reason for the suspension;

(c) the date of the suspension;

(d) that the limited partnership may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division in accordance with Section 48-2a-1107 in addition to any fees required by Subsection (3); and

(e) that the limited partnership's certificate or registration will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited partnership has removed the suspension before that time.

(5) The division shall include an annual report form in the notice of suspension if the suspension is due to failure to file an annual report.

(6) If the limited partnership does not remove the suspension within one year after the date of mailing of the notice of suspension, the limited partnership's certificate or registration may be canceled involuntarily by the director of the division. The division shall mail a certificate of cancellation to the general partners of the limited partnership at the addresses set forth in the limited partnership's certificate. No canceled limited partnership may be reinstated except as set forth in Subsection (7). Any assumed names filed on behalf of the canceled limited partnership under Section 42-2-5 also are canceled. The name of a canceled limited partnership and any assumed names filed on its behalf are not available for one year from the date of cancellation for use by any other person transacting business in this state, or person doing business under an assumed name under Section 42-2-5.

(7) Any limited partnership whose certificate or registration has been canceled under Section 48-2a-203 may be reinstated within one year following cancellation upon application and payment of all penalties and reinstatement fees.

(8) A limited partner of a limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership having had its limited partnership certificate or registration suspended or canceled.

(9) A limited partnership that has had its certificate or registration suspended or canceled may not maintain any action, suit, or proceeding in any court of this state until it has removed the suspension or reinstated its certificate or registration following cancellation.

**History:** C. 1953, 48-2a-203.5, enacted by L. 1990, ch. 233, § 11; 1991, ch. 189, § 10.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted "in which case the certificate shall be canceled as of the date of its filing" near the end of Subsec-

tion (1)(a); added "or by the partnership agreement" at the end of Subsection (1)(b); rewrote the introductory paragraph of Subsection (2); added Subsections (2)(a) and (2)(b); and added Subsections (3) through (9).

#### **48-2a-204. Execution of certificates.**

(1) Each certificate required by this chapter to be filed with the division shall be executed in the following manner:

(a) an original certificate of limited partnership must be signed under penalty of perjury by all general partners;

(b) a certificate of amendment must be signed under penalty of perjury by at least one general partner and by each other general partner designated in the certificate as a new general partner; and

(c) a certificate of cancellation must be signed under penalty of perjury by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

**History:** C. 1953, 48-2a-204, enacted by L. 1990, ch. 233, § 12.

### 48-2a-205. Execution by judicial act.

If a person required by Section 48-2a-204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition a district court having competent jurisdiction to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the division to record an appropriate certificate.

**History:** C. 1953, 48-2a-205, enacted by L. 1990, ch. 233, § 13.

### 48-2a-206. Filing with the division.

(1) An original and one copy of the certificate of limited partnership, and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the division. A person who executes a certificate as an attorney-in-fact or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the division finds that any certificate does not conform to law as to its form, upon receipt of all filing fees established under Section 63-38-3, it shall:

- (a) place on the original and the copy a stamp or seal indicating the time, day, month, and year of the filing, the director of the division's signature, and the division's seal, or facsimiles thereof, and the name of the division;
- (b) file the signed original in its office; and
- (c) return the stamped copy to the person who filed it or his representative.

(2) The stamped copy of the certificate of limited partnership and of any certificate of amendment or cancellation shall be conclusive evidence that all conditions precedent required for the formation, amendment, or cancellation of a limited partnership have been complied with and the limited partnership has been formed, amended, or canceled under this chapter, except with respect to an action for involuntary cancellation of the limited partnership's certificate for fraud under Subsection 48-2a-203.5(1)(a).

(3) Upon the filing of a certificate of amendment or judicial decree of amendment with the division, the certificate of limited partnership is amended as set forth in the certificate of amendment or judicial decree of amendment, and upon filing a certificate of cancellation, or of a judicial decree of cancellation, the division shall cancel the certificate of limited partnership effective as of the date the cancellation was filed or as of the date specified in the decree, unless a later effective date is specified in the cancellation.

**History:** C. 1953, 48-2a-206, enacted by L. 1990, ch. 233, § 14; 1991, ch. 189, § 11.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted "attorney-in-fact" for "agent" in the second sentence of the introductory paragraph of Subsec-

tion (1); in Subsections (2) and (3), inserted references to "certificate of amendment or cancellation" and inserted references to the amendment or cancellation of the certificate of limited partnership; added "for fraud under Subsection 48-2a-203.5(1)(a)" at the end of Subsec-

tion (2); substituted the reference to the effective date of the certificate of cancellation for "is cancelled" at the end of Subsection (3); and made stylistic changes throughout the section.

### 48-2a-207. Liability for false statement in certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) any person who executed the certificate, whether in his own name or on behalf of another as attorney-in-fact, who knew, or reasonably should have known, that the statement was false at the time the certificate was executed; and

(2) any general partner who at any time knew, or reasonably should have known, that the statement was false at the time the certificate was executed or knew or reasonably should have known that any arrangement or other fact described in the certificate had changed, making the statement inaccurate in any respect, if that general partner failed to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 48-2a-202 or 48-2a-203, within 30 days of the date on which the general partner knew, or reasonably should have known, that the statement was false or that the change had occurred.

**History:** C. 1953, 48-2a-207, enacted by L. 1990, ch. 233, § 15; 1991, ch. 189, § 12; 1992, ch. 30, § 90.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted the language beginning with "executed the certificate" and ending with "reasonably should have known" for "executes the certificate or causes another to execute it on his behalf and knew, and any general partner who knew or should have known" in Subsection (1); in Subsection

(2), substituted the language beginning with "at any time" and ending with "or knew or reasonably" for "thereafter knows or" at the beginning of the Subsection, and substituted the language beginning with "the general partner" for "the change occurred" at the end of the Subsection; and made stylistic changes throughout the section.

The 1992 amendment, effective April 27, 1992, substituted "48-2a-202 or 48-2a-203" for "48-2a-205" in Subsection (2).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1311, 1312.

**C.J.S.** — 68 C.J.S. Partnership § 478.  
**Key Numbers.** — Partnership ⇌ 354.

### 48-2a-208. Scope of notice.

The fact that a certificate of limited partnership or amendment to a certificate of limited partnership is on file in the office of the division is notice that the partnership is a limited partnership and the persons designated as general partners are general partners, but it is not notice of any other fact.

**History:** C. 1953, 48-2a-208, enacted by L. 1990, ch. 233, § 16; 1991, ch. 189, § 13.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, inserted "or amendment to a certificate of limited partnership" near the beginning of the section.

**48-2a-209. Delivery of certificates to limited partners.**

Upon the return by the division pursuant to Section 48-2a-206 of a stamped copy of any certificate, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

**History:** C. 1953, 48-2a-209, enacted by L. 1990, ch. 233, § 17.

**48-2a-210. Annual report.**

(1) Each domestic limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file with the division, during the month of its anniversary date of formation, in the case of domestic limited partnerships, or during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited partnerships authorized to transact business in this state, an annual report setting forth:

(a) the name of the limited partnership and the state or country under the laws of which it is formed; and

(b) the name and street address of the agent for service of process required to be maintained by Section 48-2a-104.

(2) The annual report shall be made on forms prescribed and furnished by the division, and the information contained on the annual report shall be given as of the date of execution of the report. The annual report forms shall include a statement of notice to the limited partnership that failure to file the annual report will result in the suspension and eventual cancellation of its certificate of limited partnership, in the case of a domestic limited partnership, or of its registration, in the case of a foreign limited partnership authorized to transact business in this state. The annual report shall be signed under penalty of perjury by any general partner. If the registered agent has changed since the last annual report or other appointment of a registered agent, the annual report shall also be signed by the new registered agent.

(3) If the division finds that the report conforms to the requirements of this chapter, it shall file the report. If the division finds that the report does not conform, it shall mail the report first-class postage prepaid to the limited partnership at the addresses set forth in the certificate for any necessary corrections. If a report is returned, the penalties for failure to file the report within the time prescribed in Section 48-2a-203.5 do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited partnership.

**History:** C. 1953, 48-2a-210, enacted by L. 1990, ch. 233, § 18; 1991, ch. 189, § 14.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, made stylistic changes in the introductory language of Subsection (1); in Subsection (2), inserted "and eventual cancellation" and substituted "of its registration" for "its authority to conduct business in this state" in the second sentence, and inserted "new" preceding "registered agent"

near the end of the last sentence; and substituted "Section 48-2a-203.5" for "this section" in the last sentence of Subsection (3).

**Effective Dates.** — Section 48-2a-1104(1) provides that the existing provisions for the execution and filing of certificates of limited partnerships continue in effect with respect to preexisting limited partnerships until January 1, 1991, and that § 48-2a-210 is not effective



with respect to such preexisting limited partnerships until January 1, 1991.

Section 48-2a-1104(2) provides that § 48-2a-210 is not effective until January 1, 1991.

## ARTICLE III LIMITED PARTNERS

### 48-2a-301. Admission of additional limited partners.

- (1) A person becomes a limited partner on the later of:
  - (a) the date the original certificate of limited partnership is filed; or
  - (b) the date stated in the records of the limited partnership as the date that person becomes a limited partner.
- (2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:
  - (a) in the case of a person acquiring a partnership interest directly from the limited partnership or in the case of an assignee of a partnership interest of a partner who does not have authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
  - (b) in the case of an assignee of a partnership interest of a partner who has the authority, as provided in Section 48-2a-704, to grant the assignee the right to become a limited partner, upon the exercise of that authority and compliance with any conditions limiting the grant or exercise of the authority.

**History:** C. 1953, 48-2a-301, enacted by L. 1990, ch. 233, § 19; 1991, ch. 189, § 15.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted the lan-

guage beginning with "or in the case" and ending with "limited partner" in Subsection (2)(a), and substituted "authority" for "power" in three places in Subsection (2)(b).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1270 to 1274, 1292.

**C.J.S.** — 68 C.J.S. Partnership § 474.  
**Key Numbers.** — Partnership ⇌ 363.

### 48-2a-302. Voting.

Subject to Section 48-2a-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

**History:** C. 1953, 48-2a-302, enacted by L. 1990, ch. 233, § 20.

**48-2a-303. Liability to third parties.**

(1) Except as provided in Subsection (4), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of Subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificate of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to Section 48-2a-803; or

(h) exercising any right or power permitted limited partners under this chapter and not specifically enumerated in this subsection.

(3) The enumeration in Subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by

Subsection 48-2a-102(1)(b) is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**History:** C. 1953, 48-2a-303, enacted by L. 1990, ch. 233, § 21; 1991, ch. 189, § 16.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, substituted "Subsection 48-2a-102(1)(b)" for "Subsection 48-2a-102(2)" in Subsection (4).

#### NOTES TO DECISIONS

##### **Participation.**

Where the only business of the partnership was the organization and operation of a life insurance corporation and all the partners actively participated, the partners were liable

as general partners. *Bergeson v. Life Ins. Corp. of Am.*, 170 F. Supp. 150 (D. Utah 1958), rev'd in part on other grounds, 265 F.2d 227 (10th Cir.), cert. denied, 360 U.S. 932, 79 S. Ct. 1452, 3 L. Ed. 2d 1545 (1959).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1365 to 1373.

**C.J.S.** — 68 C.J.S. Partnership § 478.

**A.L.R.** — Liability of limited partner arising

from taking part in control of business under Uniform Limited Partnership Act, 79 A.L.R.4th 427.

**Key Numbers.** — Partnership ⇐ 368.

### **48-2a-304. Person erroneously believing himself to be a limited partner.**

(1) Except as provided in Subsection (2), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future participation in the profits and losses of the enterprise by executing and filing with the division a certificate declaring withdrawal under this section; withdrawal under this subsection is without prejudice to the person's right to receive the return of his unreturned contribution.

(2) A person who makes a contribution under the circumstance described in Subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate is filed to show withdrawal or before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction and acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person.

**History:** C. 1953, 48-2a-304, enacted by L. 1990, ch. 233, § 22; 1991, ch. 189, § 17.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, in Subsection

(1)(b), substituted "participation in the profits and losses of the enterprise" for "equity participation in the enterprise" and added the language beginning with "withdrawal under this

subsection"; and in Subsection (2), substituted "under the circumstance" for "of the kind" near the beginning of the subsection and made several stylistic changes near the middle of the subsection.

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1348 to 1352.

**C.J.S.** — 68 C.J.S. Partnership § 479.  
**Key Numbers.** — Partnership ⇌ 362.

**48-2a-305. Inspection of records — Right to information.**

- (1) Each limited partner has the right to:
  - (a) inspect and copy any of the partnership records required to be maintained by Section 48-2a-105;
  - (b) obtain from the general partners from time to time upon reasonable demand:
    - (i) a copy of any of the partnership records required to be maintained by Section 48-2a-105;
    - (ii) true and full information regarding the state of the business and financial condition of the limited partnership;
    - (iii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and
  - (c) other information regarding the affairs of the limited partnership as is just and reasonable.
- (2) Unless otherwise provided in the partnership agreement, the cost of providing the information described in this section shall be the responsibility of the partnership.

**History:** C. 1953, 48-2a-305, enacted by L. 1990, ch. 233, § 23.

**ARTICLE IV  
GENERAL PARTNERS**

**48-2a-401. Admission of additional general partners.**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

**History:** C. 1953, 48-2a-401, enacted by L. 1990, ch. 233, § 24.

COLLATERAL REFERENCES

**A.L.R.** — Limited partnership: sufficiency of procedure for designating or admitting additional general partner, 6 A.L.R.4th 1277.

**48-2a-402. Events of withdrawal.**

Except as approved by the specific written consent of all partners at the time thereof with respect to Subsections (4) through (10), a person ceases to be a general partner of a limited partnership upon the happening of any of the following events of withdrawal:

(1) The general partner withdraws from the limited partnership as provided in Section 48-2a-602.

(2) The general partner ceases to be a member of the limited partnership as provided in Section 48-2a-702.

(3) The general partner is removed as a general partner in accordance with the partnership agreement.

(4) Unless otherwise provided in the partnership agreement, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated as bankrupt or insolvent;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding described in Subsection (d); or

(f) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties.

(5) Unless otherwise provided in the partnership agreement, if within 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated.

(6) In the case of a general partner who is a natural person:

(a) his death; or

(b) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate.

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the distribution by the trustee of the trust's entire interest in the partnership, but not merely the substitution of a new trustee.

(8) In the case of a general partner that is a separate partnership, the dissolution and completion of winding up of the separate partnership.

(9) In the case of a general partner that is a corporation, the issuance of a certificate of dissolution or its equivalent, or of a judicial decree of dissolution, for the corporation or the revocation of its charter.

(10) In the case of a person who is acting as a general partner by virtue of being a fiduciary of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

**History:** C. 1953, 48-2a-403, enacted by L. 1990, ch. 233, § 25; 1991, ch. 189, § 18.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, in the introductory language, inserted "thereof with respect to Subsections (4) through (10)" and added "of withdrawal" at the end of the introductory language; inserted "if within" near the beginning of Subsection (5); substituted "distribution by the trustee of the trust's entire interest in the

partnership" for "termination of the trust" in Subsection (7); substituted "completion" for "commencement" in Subsection (8); substituted the language beginning with "issuance" and ending with "decree of dissolution" for "filing of a certificate of dissolution, or its equivalent" in Subsection (9); and inserted the language beginning with "a person" and ending with "being a fiduciary of" near the beginning of Subsection (10).

### 48-2a-403. General powers and liabilities.

(1) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(2) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

**History:** C. 1953, 48-2a-403, enacted by L. 1990, ch. 233, § 26.

#### NOTES TO DECISIONS

##### ANALYSIS

Conduct of business.  
Conveyance of property.

##### Conduct of business.

The general partners alone have the right and power to conduct the partnership business. *Harline v. Daines*, 567 P.2d 1120 (Utah 1977).

##### Conveyance of property.

Where the title to real property is in the

name of one or more or all of the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of § 48-1-6(1). *Billings v. Cinnamon Ridge, Ltd.* (In re Granada, Inc.), 92 Bankr. 501 (Bankr. D. Utah 1988) (decided under former § 48-2-9).

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1320 to 1332.

**C.J.S.** — 68 C.J.S. Partnership § 470.  
**Key Numbers.** — Partnership ⇌ 366.

### 48-2a-404. Contributions by general partners.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a

limited partner to the extent of his participation in the partnership limited partner.

**History:** C. 1953, 48-2a-404, enacted by L. 1990, ch. 233, § 27; 1991, ch. 189, § 19.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, near the end of the last sentence, inserted "rights and" after "and liabilities."

### 48-2a-405. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately with all or any class of the limited partners, on any matter.

**History:** C. 1953, 48-2a-405, enacted by L. 1990, ch. 233, § 28.

## ARTICLE V FINANCE

### 48-2a-501. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

**History:** C. 1953, 48-2a-501, enacted by L. 1990, ch. 233, § 29.

**Applicability.** — Section 48-2a-1104(3) pro-

vides that § 48-2a-501 applies only to contributions and distributions made after July 1, 1990.

### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership § 1354.

**C.J.S.** — 68 C.J.S. Partnership § 456.  
**Key Numbers.** — Partnership ¶ 355.

### 48-2a-502. Liability for contribution.

(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the stated contribution which has not been made.

(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after

limited partner to the extent of his participation in the partnership as a limited partner.

**History:** C. 1953, 48-2a-404, enacted by L. 1990, ch. 233, § 27; 1991, ch. 189, § 19.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, near the end of the last sentence, inserted "rights and" and inserted "and liabilities."

### 48-2a-405. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

**History:** C. 1953, 48-2a-405, enacted by L. 1990, ch. 233, § 28.

## ARTICLE V FINANCE

### 48-2a-501. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**History:** C. 1953, 48-2a-501, enacted by L. 1990, ch. 233, § 29.

**Applicability.** — Section 48-2a-1104(3) pro-

vides that § 48-2a-501 applies only to contributions and distributions made after July 1, 1990.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership § 1354.

**C.J.S.** — 68 C.J.S. Partnership § 456.  
**Key Numbers.** — Partnership ⇐ 355.

### 48-2a-502. Liability for contribution.

(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the stated contribution which has not been made.

(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after



the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

**History:** C. 1953, 48-2a-502, enacted by L. 1990, ch. 233, § 30.

**Applicability.** — Section 48-2a-1104(3) pro-

vides that § 48-2a-502 applies only to contributions and distributions made after July 1, 1990.

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1353, 1357 to 1359, 1361.

**C.J.S.** — 68 C.J.S. Partnership § 471.  
**Key Numbers.** — Partnership ⇌ 366.

**48-2a-503. Sharing of profits and losses.**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing, profits, and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History:** C. 1953, 48-2a-503, enacted by L. 1990, ch. 233, § 31.

**Applicability.** — Section 48-2a-1104(5) provides that, unless otherwise agreed by the partners, the applicable provisions of existing

law governing the allocation of profits and losses, rather than the provisions of this section, govern limited partnerships formed before July 1, 1990.

**48-2a-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 48-2a-105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History:** C. 1953, 48-2a-504, enacted by L. 1990, ch. 233, § 32; 1991, ch. 189, § 20.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1999, substituted "be made" for "be allocated" in the first sentence.

**Applicability.** — Section 48-2a-1104(5) pro-

vides that, unless otherwise agreed by the partners, the applicable provisions of existing law governing the sharing of distributions, rather than the provisions of this section, govern limited partnerships formed before July 1, 1990.

## ARTICLE VI DISTRIBUTIONS AND WITHDRAWAL

### 48-2a-601. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

**History:** C. 1953, 48-2a-601, enacted by L. 1990, ch. 233, § 33; 1991, ch. 189, § 21.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted "thereof" following "winding up" near the middle of the section.

**Applicability.** — Section 48-2a-1104(5) provides that, unless otherwise agreed by the partners, the applicable provisions of existing law governing interim distributions, rather than the provisions of this section, govern limited partnerships formed before July 1, 1990.

### 48-2a-602. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

**History:** C. 1953, 48-2a-602, enacted by L. 1990, ch. 233, § 34.

### 48-2a-603. Withdrawal of limited partners.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership required to be kept under Section 48-2a-105.

**History:** C. 1953, 48-2a-603, enacted by L. 1990, ch. 233, § 35.

### 48-2a-604. Distribution upon withdrawal.

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

**History:** C. 1953, 48-2a-605, enacted by L. 1990, ch. 233, § 36; 1991, ch. 189, § 22.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted the second "partnership" near the middle of the section.

**Applicability.** — Section 48-2a-1104(5) pro-

vides that, unless otherwise agreed by the partners, the applicable provisions of existing law governing distributions to a withdrawing partner, rather than the provisions of this section, govern limited partnerships formed before July 1, 1990.

### **48-2a-605. Distribution in kind.**

Except as provided in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from the limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

**History:** C. 1953, 48-2a-605, enacted by L. 1990, ch. 233, § 37.

### **48-2a-606. Right to distribution.**

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

**History:** C. 1953, 48-2a-606, enacted by L. 1990, ch. 233, § 38.

### **48-2a-607. Limitations on distributions.**

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

**History:** C. 1953, 48-2a-607, enacted by L. 1990, ch. 233, § 39.

### **48-2a-608. Liability upon return of contribution.**

(1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(3) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept under Section 48-2a-105, of his contribution to the extent that it has been made, less any previous return of contributions.

**History:** C. 1953, 48-2a-608, enacted by L. 1990, ch. 233, § 40; 1991, ch. 189, § 23.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted "to the extent that it has been made, less any previous return of contributions" for "which has

not been distributed to him" at the end of Subsection (3).

**Applicability.** — Section 48-2a-1104(3) provides that this section applies only to contributions and distributions made after July 1, 1990.

## ARTICLE VII

### ASSIGNMENT OF PARTNERSHIP INTERESTS

#### 48-2a-701. Nature of partnership interest.

A partnership interest is personal property.

**History:** C. 1953, 48-2a-701, enacted by L. 1990, ch. 233, § 41.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership § 1345.

**C.J.S.** — 68 C.J.S. Partnership § 471.

**A.L.R.** — Partnership and joint venture interests as securities within meaning of federal

Securities Act of 1933 (15 USCS §§ 77a et seq.) and Securities Exchange Act of 1934 (15 USCS §§ 78a et seq.), 58 A.L.R. Fed. 408.

**Key Numbers.** — Partnership ⇨ 366.

#### 48-2a-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Except as set forth in Subsection 48-2a-801(4), an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all of his partnership interest.

**History:** C. 1953, 48-2a-702, enacted by L. 1990, ch. 233, § 42; 1991, ch. 189, § 24.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted "Ex-

cept as set forth in Subsection 48-2a-1801(4), an assignment" for "An assignment" at the beginning of the second sentence.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1294 to 1298.

**C.J.S.** — 68 C.J.S. Partnership § 474.

**Key Numbers.** — Partnership ⇨ 363.

**48-2a-703. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent it is the beneficiary of such a charging order, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

**History:** C. 1953, 48-2a-703, enacted by L. 1990, ch. 233, § 43; 1991, ch. 189, § 25.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, substituted "it is the beneficiary of such a charging order" for "so charged" in the second sentence.

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1374 to 1378.

**C.J.S.** — 68 C.J.S. Partnership § 483.  
**Key Numbers.** — Partnership ⇌ 374.

**48-2a-704. Right of assignee to become limited partner.**

(1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- (a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement and the conditions set forth in the partnership agreement are met; or
- (b) all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles V and VI of this chapter. However, the assignee is not obligated for any other liabilities unknown to the assignee at the time he became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 48-2a-207, 48-2a-502, and 48-2a-608.

**History:** C. 1953, 48-2a-704, enacted by L. 1990, ch. 233, § 44; 1991, ch. 189, § 26.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted "any other" preceding "liabilities" in the last sentence of Subsection (2), and inserted the refer-

ence to "48-2a-608" and made related stylistic changes at the end of Subsection (3).

**Applicability.** — Section 48-2a-1104(4) provides that this section applies only to assignments made after July 1, 1990.

**48-2a-705. Power of estate of deceased or incompetent partner.**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any authority the partner had

to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

**History:** C. 1953, 48-2a-705, enacted by L. 1990, ch. 233, § 45; 1991, ch. 189, § 27.

**Amendment Notes.** — The 1991 amend-

ment, effective April 29, 1991, substituted "any authority" for "any power" near the end of the first sentence.

## ARTICLE VIII DISSOLUTION

### 48-2a-801. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) at the time specified in the certificate of limited partnership;
- (2) upon the happening of events specified in writing in the partnership agreement;
- (3) written consent of all partners;
- (4) an event of withdrawal of a general partner unless:
  - (a) at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so; or
  - (b) within 90 days after the event of withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (5) entry of a decree of judicial dissolution under Section 48-2a-802.

**History:** C. 1953, 48-2a-801, enacted by L. 1990, ch. 233, § 46; 1991, ch. 189, § 28.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, divided Subsection (4) into Subsections (4)(a) and (4)(b), making related stylistic changes; deleted "but the

limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if" following "partner does so" near the end of Subsection (4)(a); and inserted "event of" preceding "withdrawal" near the beginning of Subsection (4)(b).

### 48-2a-802. Judicial dissolution.

On application by or for a partner or the director of the division, a district court having competent jurisdiction may decree dissolution of the limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement or for failure to comply with the requirements of this chapter.

**History:** C. 1953, 48-2a-802, enacted by L. 1990, ch. 233, § 47.

**48-2a-803. Winding up.**

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but a district court having competent jurisdiction may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

**History:** C. 1953, 48-2a-804, enacted by L. 1990, ch. 233, § 48.

**48-2a-804. Distribution of assets.**

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 48-2a-601 or 48-2a-604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 48-2a-601 or 48-2a-604; and

(3) except as provided in the partnership agreement, to partners with respect to their partnership interests:

(a) for the return of their contributions; and

(b) in the proportions in which the partners share in distributions.

**History:** C. 1953, 48-2a-804, enacted by L. 1990, ch. 233, § 49; 1991, ch. 189, § 29.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, added "with respect to their partnership interests" at the end of the introductory language in Subsection (3), and deleted "respecting their partnership interests" at the beginning of Subsection (3)(b).

**Applicability.** — Section 48-2a-1104(5) provides that, unless otherwise agreed by the partners, the applicable provisions of existing law governing distributions of assets upon the winding up of a limited partnership, rather than the provisions of this section, govern limited partnerships formed before July 1, 1990.

COLLATERAL REFERENCES

**Am. Jur. 2d.** — 59A Am. Jur. 2d Partnership §§ 1406, 1407.

**C.J.S.** — 68 C.J.S. Partnership § 488.  
**Key Numbers.** — Partnership ⇨ 376.

**ARTICLE IX**

**FOREIGN LIMITED PARTNERSHIPS**

**48-2a-901. Law governing.**

Subject to the Constitution of this state:

(1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

**History:** C. 1953, 48-2-901, enacted by L. 1990, ch. 233, § 50. provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.  
**Effective Dates.** — Section 48-2a-1104(2)

### 48-2a-902. Registration.

(1) Before transacting business in this state, a foreign limited partnership shall register with the division. In order to register, a foreign limited partnership shall submit to the division on forms provided by the division a certificate of good standing or similar evidence of its organization and existence under the laws of the state in which it was formed, together with one original and one copy of an application for registration as a foreign limited partnership, signed under penalty of perjury by a general partner and setting forth:

(a) the name of the foreign limited partnership and, if that name is not available in this state, the name under which it proposes to register and transact business in this state;

(b) the state and date of its formation;

(c) the name and street address of an agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state;

(d) a statement that the director of the division is appointed the agent of the foreign limited partnership for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;

(e) the street address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(f) the name and business address of each general partner; and

(g) the street address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(b) holding meetings of its general partners or limited partners or carrying on other activities concerning its internal affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(e) effecting sales through independent contractors;

(f) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;



(g) creating evidences of debt, mortgages, or liens on real or personal property;

(h) securing or collecting debts or enforcing any rights in property securing the same;

(i) transacting any business in interstate commerce;

(j) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature; or

(k) acquiring, in transactions outside this state or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights in property provided for in the conditional sale contracts or securing the debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by the conditional sales contracts or the interest of the mortgagee or holder of the lien in the security, or any combination of such transactions.

**History:** C. 1953, 48-2a-902, enacted by L. 1990, ch. 233, § 51; 1991, ch. 5, § 52; 1991, ch. 189, § 30.

**Amendment Notes.** — The 1991 amendment by ch. 5, effective February 11, 1991, substituted "Subsection (1)(c)" for "Subsection (3)" in Subsection (1)(d).

The 1991 amendment by ch. 189, effective April 29, 1991, substituted the language beginning with "if the agent" and ending with "cannot be found" for "no agent has been appointed under Subsection (3) or, if appointed, the

agent's authority has been revoked or if the agent cannot be found" in Subsection (1)(d), and substituted "this chapter" for "this act" near the end of the introductory language in Subsection (2).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

**Effective Dates.** — Section 48-2a-1104(2) provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

### 48-2a-903. Issuance of registration.

(1) If the division finds that an application for registration conforms to law as to its form, and all requisite fees have been paid, it shall:

(a) place on the original and the copy of the application a stamp or seal indicating the time, month, day, and year of the filing, the director of the division's signature and the division's seal, or facsimiles thereof, and the name of the division;

(b) file in its office the signed original of the application; and

(c) issue a certificate of registration to transact business in this state to which is attached the stamped copy.

(2) The certificate of registration, together with the stamped copy of the application, shall be returned to the person who filed the application or his representative.

**History:** C. 1953, 48-2a-903, enacted by L. 1990, ch. 233, § 52.

**Effective Dates.** — Section 48-2a-1104(2)

provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

**48-2a-904. Name.**

A foreign limited partnership shall register with the division under the name under which it is registered in its state of organization; provided that the name includes the words "limited partnership", "limited", "L.P.", or "Ltd." and provided that the name could be registered by a domestic limited partnership.

**History:** C. 1953, 48-2a-904, enacted by L. 1990, ch. 233, § 53. provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

**Effective Dates.** — Section 48-2a-1104(2)

**48-2a-905. Changes and amendments.**

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described in the statement have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file with the division a certificate, signed under penalty of perjury by a general partner, correcting or amending the statement.

**History:** C. 1953, 48-2a-905, enacted by L. 1990, ch. 233, § 54; 1991, ch. 189, § 31. substituted "or amending the statement" for "such statements" at the end of the section.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted "in the statement" near the middle of the section, and **Effective Dates.** — Section 48-2a-1104(2) provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

**48-2a-906. Cancellation of registration.**

A foreign limited partnership may cancel its registration by filing with the division a certificate of cancellation signed under penalty of perjury by a general partner. A cancellation does not terminate the authority of the director of the division to accept service of process on the foreign limited partnership with respect to claims for relief and causes of action against the foreign limited partnership arising before the cancellation.

**History:** C. 1953, 48-2a-906, enacted by L. 1990, ch. 233, § 55; 1991, ch. 189, § 32. the transactions of business in this state" at the end of the second sentence.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted "against the foreign limited partnership arising before the cancellation" for "arising out of **Effective Dates.** — Section 48-2a-1104(2) provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

**48-2a-907. Transaction of business without registration.**

(1) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the fact

that the foreign limited partnership has transacted business in this state without registration or has otherwise become subject to the jurisdiction of the courts of this state.

(4) A foreign limited partnership, by transacting business in this state without registration, appoints the director of the division as its agent for service of process with respect to claims for relief and causes of action arising out of the transaction of business in this state.

**History:** C. 1953, 48-2a-907, enacted by L. 1990, ch. 233, § 56; 1991, ch. 189, § 33.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, substituted the language beginning with “the fact” and ending “courts of this state” for “having transacted

business in this state without registration” at the end of Subsection (3).

**Effective Dates.** — Section 48-2a-1104(2) provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

### 48-2a-908. Action by director of division.

The director of the division may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this Article.

**History:** C. 1953, 48-2-908, enacted by L. 1990, ch. 233, § 57.

**Effective Dates.** — Section 48-2a-1104(2)

provides that §§ 48-2a-901 to 48-2a-908 are effective January 1, 1991.

## ARTICLE X DERIVATIVE ACTIONS

### 48-2a-1001. Right of action.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action and the general partners’ decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those general partners to bring the action is not likely to succeed.

**History:** C. 1953, 48-2a-1001, enacted by L. 1990, ch. 233, § 58.

#### COLLATERAL REFERENCES

**A.L.R.** — Right of limited partner to maintain derivative action on behalf of partnership, 26 A.L.R.4th 264.

### 48-2a-1002. Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

- (1) must have been a partner at the time of the transaction of which he complains; or
- (2) his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

**History:** C. 1953, 48-2a-1002, enacted by L. 1990, ch. 233, § 59; 1991, ch. 189, § 34. Amendment Notes. — The 1991 amend-

ment, effective April 29, 1991, deleted "had" before "devolved upon him" in Subsection (2).

### 48-2a-1003. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

**History:** C. 1953, 48-2a-1003, enacted by L. 1990, ch. 233, § 60.

### 48-2a-1004. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

**History:** C. 1953, 48-2a-1004, enacted by L. 1990, ch. 233, § 61.

### 48-2a-1005. Security and costs.

In any action instituted in the right of any domestic or foreign limited partnership, unless the unreturned contributions to the partnership property of or allocable to the plaintiff amount to 5% or more of the unreturned contributions of all limited partners, in their status as limited partners, or the unreturned contributions of or allocable to the plaintiff have a market value in excess of \$25,000, the limited partnership in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by the limited partnership in the defense of the action or may be incurred by other parties named as defendant for which the limited partnership may become legally liable, but not including attorneys' fees. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased, in the discretion of the court, upon

showing that the security provided has or may become inadequate or excessive. The limited partnership shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of such action if the court finds the action was brought without reasonable cause.

**History:** C. 1953, 48-2a-1005, enacted by L. 1990, ch. 233, § 62; 1991, ch. 189, § 35.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, inserted “unre-

turned” in three places near the beginning of the first sentence and substituted “the limited partnership” for “it” near the end of the first sentence.

#### **48-2a-1006. Indemnification of a general partner.**

To the extent that a general partner has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the general partner under Section 48-2a-1001, or in defense of any claim, issue, or matter therein, the general partner shall be indemnified by the limited partnership against expenses, including attorneys’ fees, which the general partner actually and reasonably incurred.

**History:** C. 1953, 48-2a-1006, enacted by L. 1990, ch. 233, § 63.

## **ARTICLE XI MISCELLANEOUS**

#### **48-2a-1101. Construction and application.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**History:** C. 1953, 48-2a-1101, enacted by L. 1990, ch. 233, § 64.

#### **48-2a-1102. Short title.**

This chapter may be cited as the “Utah Revised Uniform Limited Partnership Act.”

**History:** C. 1953, 48-2a-1102, enacted by L. 1990, ch. 233, § 65.

#### **48-2a-1103. Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**History:** C. 1953, 48-2a-1103, enacted by L. 1990, ch. 233, § 66.

### **48-2a-1104. Effective date — Extended effective date — Applicability of former law.**

Except as set forth below, the effective date of this chapter is July 1, 1990.

(1) The existing provisions for execution and filing of certificates of limited partnerships continue in effect with respect to limited partnerships organized prior to the effective date of this chapter until January 1, 1991, the extended effective date, and Sections 48-2a-102, 48-2a-105, 48-2a-201, and 48-2a-210 are not effective with respect to such preexisting limited partnerships until January 1, 1991, the extended effective date.

(2) Sections 48-2a-210, 48-2a-901, 48-2a-902, 48-2a-903, 48-2a-904, 48-2a-905, 48-2a-906, 48-2a-907, and 48-2a-908, governing the registration of foreign limited partnerships are not effective until January 1, 1991, the extended effective date.

(3) Sections 48-2a-501, 48-2a-502, and 48-2a-608 apply only to contributions and distributions made after July 1, 1990, and Subsection 48-2a-102(1)(a) applies only to limited partnerships formed or qualified after July 1, 1990.

(4) Section 48-2a-704 applies only to assignments made after July 1, 1990.

(5) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of Section 48-2a-503, sharing of distributions, rather than the provisions of Section 48-2a-504, interim distributions, rather than the provisions of Section 48-2a-601, distributions to a withdrawing partner, rather than the provisions of Section 48-2a-604, and distributions of assets upon the winding up of a limited partnership, rather than the provisions of Section 48-2a-804, govern limited partnerships formed before July 1, 1990.

(6) The county clerk in each county in this state shall transmit to the division by January 1, 1991, all certificates of limited partnership and certificates of amendment filed with them prior to July 1, 1990, by domestic limited partnerships whose existence has not terminated prior to July 1, 1990.

**History:** C. 1953, 48-2a-1104, enacted by L. 1990, ch. 233, § 67; 1991, ch. 5, § 53; 1991, ch. 189, § 36.

**Amendment Notes.** — The 1991 amendment by ch. 5, effective February 11, 1991, substituted "Section 48-2a-102(1)" for "Section 48-2a-102(i)" in Subsection (3).

The 1991 amendment by ch. 189, effective April 29, 1991, substituted "Subsection 48-2a-

102(1)(a)" for "Section 48-2a-102(i)" in Subsection (3), and inserted the language beginning with "sharing of distributions" and ending with "Section 48-2a-601" near the middle of Subsection (5).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

**48-2a-1105. Rules for cases not provided for in this chapter.**

In any case not provided for in this chapter the provisions of Title 48, Chapter 1, Uniform Partnership Act, govern.

**History:** C. 1953, 48-2a-1105, enacted by L. 1990, ch. 233, § 68.

**48-2a-1106. Savings clause.**

The repeal of any statutory provision by this chapter does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on July 1, 1990, nor does the repeal of any existing statutory provision by this chapter impair any contract or affect any right accrued before July 1, 1990.

**History:** C. 1953, 48-2a-1106, enacted by L. 1990, ch. 233, § 69.

**48-2a-1107. Fees.**

The division may charge and collect fees in accordance with the provisions of Section 63-38-3.

**History:** C. 1953, 48-2a-1107, enacted by L. 1990, ch. 233, § 70.

**CHAPTER 2b**

**UTAH LIMITED LIABILITY COMPANY ACT**

Section		Section	
48-2b-101.	Short title.	48-2b-115.	Regulating board authority — Prohibitions on individuals apply.
48-2b-102.	Definitions.		
48-2b-103.	Formation.	48-2b-116.	Articles of organization.
48-2b-104.	Scope.	48-2b-117.	Filing of articles.
48-2b-105.	Powers.	48-2b-118.	Effect of filing — Prefiling activities.
48-2b-106.	Name — Exclusive right.		
48-2b-107.	Limited liability company name — Limited rights.	48-2b-119.	Records.
48-2b-108.	Name — Omission.	48-2b-120.	Annual report.
48-2b-109.	Liability of members, managers, and employees.	48-2b-121.	When amendments required.
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48-2b-111.	Professional relationship — Personal liability.	48-2b-123.	Registered agent.
48-2b-112.	Member as a party to proceedings.	48-2b-124.	Capital contributions.
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		48-2b-127.	Ownership and disposition of property.
		48-2b-128.	Conditions for property distribution.
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Section		Section	
48-2b-130.	Profits and losses.	48-2b-145.	Cancellation of foreign limited liability companies' registration.
48-2b-131.	Transfer, adjustment, and assignment of member interests — Effect.	48-2b-146.	Effect of registration.
48-2b-132.	Conditions for distribution of property — Return of contribution.	48-2b-147.	Effect of failure to register by foreign limited liability companies.
48-2b-133.	Member liabilities.	48-2b-148.	Foreign limited liability companies — Service of process — Cause of action.
48-2b-134.	Execution of documents.	48-2b-149.	Merger and consolidation.
48-2b-135.	Penalty for false execution.	48-2b-150.	Right of action.
48-2b-136.	Restated articles of organization.	48-2b-151.	Proper plaintiff.
48-2b-137.	Dissolution.	48-2b-152.	Pleading.
48-2b-138.	Settlement upon dissolution.	48-2b-153.	Expenses.
48-2b-139.	Articles of dissolution.	48-2b-154.	Security and costs.
48-2b-140.	Filing of articles of dissolution — Effect.	48-2b-155.	Indemnification of a manager.
48-2b-141.	Cancellation of articles of organization.	48-2b-156.	Correction of technical errors in instruments.
48-2b-142.	Involuntary dissolution.	48-2b-157.	Application of partnership provisions to limited liability companies.
48-2b-143.	Foreign limited liability companies.		
48-2b-144.	Registration of foreign limited liability companies.		

### 48-2b-101. Short title.

This chapter shall be known as the "Utah Limited Liability Company Act."

**History:** C. 1953, 48-2b-101, enacted by L. 1991, ch. 258, § 2.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### COLLATERAL REFERENCES

**Brigham Young Law Review.** — Utah Limited Liability Companies: The "Ugly Ducklings," 1992 B.Y.U. L. Rev. 1091.

### 48-2b-102. Definitions.

- (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.
- (2) "Business" includes every trade, occupation, or profession.
- (3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.
- (4) "Foreign limited liability company" means a limited liability company organized under the laws of any other jurisdiction.
- (5) "Limited liability company" or "company" means a business entity organized under this chapter.
- (6) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.
- (7) "Professional services" means the personal services rendered by:
  - (a) an architect holding a license under Title 58, Chapter 3, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;



(b) an attorney granted the authority to practice law by the Supreme Court of the state of Utah as provided in Title 78, Chapter 51;

(c) a chiropractor holding a license under Title 58, Chapter 12, Part 7, Chiropractic Improvements Act, and any subsequent laws regulating the practice of chiropractic;

(d) a doctor of dentistry holding a license under Title 58, Chapter 7, Dentists and Dental Hygienists Act, and any subsequent laws regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 12, Part 3, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse whose professional nursing license designates him as a nurse anesthetist pursuant to Subsection 58-31-9.1(1);

(h) an optometrist holding a license under Title 58, Chapter 16a, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 12, Part 1, Osteopathic Medicine Licensing Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 12, Part 5, Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatrist holding a license under Title 58, Chapter 5, and any subsequent laws regulating the practice of chiropody;

(n) a psychologist holding a license under Title 58, Chapter 25a, Psychologists Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 35, and any subsequent laws regulating the practice of social work; and

(r) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(8) "Regulating board" means the board organized pursuant to state law which is charged with the licensing and regulation of the practice of the profession which a limited liability company is organized to render.

(9) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(10) "Successor limited liability company" means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies.

**History:** C. 1953, 48-2b-102, enacted by L. 1991, ch. 258, § 3; 1992, ch. 240, § 3.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, inserted "Part 3" in Subsection (7)(f) and "clinical or" in Sub-

section (7)(q) and substituted "16a" for "16" in Subsection (7)(h) and "24a" for "24" in Subsection (7)(l).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-103. Formation.

Two or more persons may form a limited liability company by executing and delivering to the division articles of organization for the limited liability company. An interest of a member in a limited liability company is personal property.

**History:** C. 1953, 48-2b-103, enacted by L. 1991, ch. 258, § 4.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-104. Scope.

Except as otherwise provided by the laws of this state, a limited liability company may conduct or promote any lawful business or purpose which a partnership, general corporation, or professional corporation may conduct or promote.

**History:** C. 1953, 48-2b-104, enacted by L. 1991, ch. 258, § 5.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-105. Powers.

(1) Each limited liability company organized and existing under this chapter may:

(a) sue or be sued, or institute or defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name;

(b) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;

(c) sell, convey, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;

(d) lend money to and otherwise assist its employees and managers;

(e) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:

(i) shares or other interests in or obligations of other foreign or domestic limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

(ii) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of them;

(f) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(g) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;

(h) conduct its business and maintain offices and exercise the powers granted by this chapter within or without this state, in any state, territory, district, or possession of the United States or in any foreign country;

(i) elect or appoint managers and agents of the limited liability company, define their duties, and fix their compensation;

(j) make and alter an operating agreement, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of its affairs;

(k) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;

(l) indemnify a member or manager or any other person to the same extent that a partnership may indemnify any of the partners, managers, employees, or agents of the partnership against expenses actually and reasonably incurred by the member or manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the member or manager is made a party;

(m) cease its activities and surrender its certificate of organization;

(n) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the company is organized;

(o) transact any lawful business which the members or the managers find to be in aid of governmental policy;

(p) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its managers and employees;

(q) be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise; and

(r) render professional services, if each member of a limited liability company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law.

(2) A limited liability company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them.

(3) A limited liability company organized to render professional services:

(a) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(b) may render professional services in Utah only through its members, managers, and employees who are licensed or registered by the state of Utah to render those professional services; and

(c) shall have all of the other powers provided under this section.

**History:** C. 1953, 48-2b-105, enacted by L. 1991, ch. 258, § 6.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-106. Name — Exclusive right.**

(1) The name of each limited liability company as set forth in the articles of organization:

(a) shall contain the words "limited company," "limited liability company," "L.C.," or "L.L.C.";

(b) may not contain the words "association," "corporation," "incorporated," "limited partnership," "limited," "L.P.," "Ltd.," or words or any abbreviation with a similar meaning in any other language; and

(c) may not, without the written consent of the United States Olympic Committee, contain the words "Olympic," "Olympiad," or "Citius Altius Fortius."

(2) A person or entity other than a limited liability company formed or registered under this chapter may not use any of the terms "limited liability company," "limited company," "L.L.C.," or "L.C." in its name in this state, except that any foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if "corporation," "incorporated," or any abbreviation of these is also used.

(3) Except as authorized by Subsection (4), the name of a limited liability company must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the name of any limited liability company formed or authorized to transact business in this state;

(c) the corporate name of any corporation incorporated or authorized to transact business in the state;

(d) any limited partnership name reserved under this chapter;

(e) any limited liability company name reserved under this chapter;

(f) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business Corporation Act, as amended, or Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, as amended;

(g) any fictitious name adopted by a foreign corporation, limited partnership, or limited liability company authorized to transact business in this state because its real name is unavailable;

(h) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(i) any assumed name, trademark, or service mark registered by the division.

(4) A limited liability company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3). The division shall approve the name for which the company applies if:

(a) the other person whose name is not distinguishable from the name under which the applicant desires to file consents to the filing in writing and submits an undertaking in a form satisfactory to the division to

change its name to a name that is distinguishable from the name of the applicant; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records. Differences between singular and plural forms of words are distinguishing.

(6) The following differences are not distinguishing:

(a) the words "corporation," "incorporated," "company," "limited partnership," "limited," "L.P.," "Ltd.," "limited liability company," "limited company," "L.C.," "L.L.C.," or any abbreviation of these words;

(b) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(c) differences in punctuation and special characters; or

(d) differences in capitalization.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) The exclusive right to a name may be reserved by:

(a) any person intending to organize a limited liability company under this chapter and to adopt that name;

(b) any limited liability company or any foreign limited liability company registered in this state intending to adopt that name;

(c) any foreign limited liability company intending to register in this state and intending to adopt that name; and

(d) any person intending to organize a foreign limited liability company and intending to have it register in this state and adopt that name.

(10) The reservation shall be made by filing with the division an application executed under penalty of perjury by the applicant to reserve a specified name. If the division finds that the name is available for use by a limited liability company or a foreign limited liability company, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days. The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

**History:** C. 1953, 48-2b-106, enacted by L. 1991, ch. 258, § 7; 1992, ch. 168, § 3; 1992 (3rd S.S.), ch. 6, § 16.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, inserted "limited liability company" and "or 'L.L.C.'" in Subsection (1)(a) and "'L.L.C.'" in Subsection (2), inserted the reference to Title 16, Chapter

6 in Subsection (3)(f), and made stylistic changes throughout the section.

The 1992 (3rd S.S.) amendment, effective July 1, 1992, substituted "Title 16, Chapter 10a, Utah Revised Business Corporation Act" for "Title 16, Chapter 10, Utah Business Corporation Act" in Subsection (3)(f).

**Effective Dates.** — Laws 1991, ch. 258,

§ 58 makes the act effective on July 1, 1991.

**Cross-References.** — Use of “limited” and other terms in name, § 48-2a-102(2).

### **48-2b-107. Limited liability company name — Limited rights.**

The authorization to file articles of organization under or to reserve or register a limited liability company name as granted by the division does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name.

**History:** C. 1953, 48-2b-107, enacted by L. 1991, ch. 258, § 8.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-108. Name — Omission.**

(1) The words “limited company” or their abbreviation “L.C.” shall be the last words of the name of every limited liability company formed under this chapter. The name of a limited liability company shall be such as to distinguish it upon the records of the division from any corporation, business name, or trademark of record with the division.

(2) Omission of the words “limited company” or their abbreviation “L.C.” in the commercial use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for any indebtedness, damage, or liability occasioned by the omission.

**History:** C. 1953, 48-2b-108, enacted by L. 1991, ch. 258, § 9.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-109. Liability of members, managers, and employees.**

Except as otherwise specifically set forth in this chapter, neither the members, the managers, nor the employees of a limited liability company are personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company.

**History:** C. 1953, 48-2b-109, enacted by L. 1991, ch. 258, § 10.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-110. Liability for acting without authority.**

All persons who assume to act as a limited liability company without authority granted by the division to do so are jointly and severally liable for all debts and liabilities so incurred.

**History:** C. 1953, 48-2b-110, enacted by L. 1991, ch. 258, § 11.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-111. Professional relationship — Personal liability.**

(1) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(2) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions. No member, manager, or employee of a limited liability company is personally liable for the acts or omissions of any other member, manager, or employee of the limited liability company.

**History:** C. 1953, 48-2b-111, enacted by L. 1991, ch. 258, § 12.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-112. Member as a party to proceedings.**

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

**History:** C. 1953, 48-2b-112, enacted by L. 1991, ch. 258, § 13.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-113. Service of process, notice, or demand.**

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

- (a) in accordance with Title 16 as if the company were a corporation; or
- (b) upon the registered agent at the business address of the registered agent.

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

(a) by delivery to:

(i) a manager of the company if management is vested in a manager; or

(ii) any member if management is vested in the members; or

(b) by writing, which shall be mailed to the registered office of the company in this state or to another address in this state that is the principal office of the company.

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

(4) (a) If a limited liability company fails to appoint or maintain a registered agent in this state, or if its registered agent cannot with reasonable

diligence be found at the registered office, then the division is the agent of the liability company upon whom any process, notice, or demand may be served.

(b) Service on the division of any process, notice, or demand shall be made by delivering to and leaving with the division an original and one copy of the process, notice, or demand, together with any fee required by the division under Section 63-38-3.

(c) If any process, notice, or demand is served on the division, it shall immediately cause one of the copies to be forwarded, by registered or certified mail, addressed to the limited liability company at its registered office.

(d) Service upon the division is not returnable in less than 30 days.

**History:** C. 1953, 48-2b-113, enacted by L. 1991, ch. 258, § 14; 1992, ch. 168, § 4.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, subdivided Subsection (2)(a); deleted "the director of" before

"the division" and made related changes throughout Subsection (4); and made stylistic changes throughout the section.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-114. Waiver of notice.**

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

**History:** C. 1953, 48-2b-114, enacted by L. 1991, ch. 258, § 15.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-115. Regulating board authority — Prohibitions on individuals apply.**

(1) Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating board to license individual persons rendering professional services or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the person is a member, manager, or employee of a limited liability company and rendering the professional services or engaging in the practice of the profession through the limited liability company.

(2) No limited liability company may do anything that is prohibited to be done by individual persons licensed to practice the profession that the limited liability company is organized to render.

**History:** C. 1953, 48-2b-115, enacted by L. 1991, ch. 258, § 16.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.



**48-2b-116. Articles of organization.**

(1) The articles of organization of a limited liability company shall set forth:

- (a) the name of the limited liability company;
- (b) the period of its duration;
- (c) the business purpose or purposes for which the limited liability company is organized;
- (d) the street address of its registered office in the state and the name, street address, and signature of its initial registered agent in the state;
- (e) a statement that the division is appointed the agent of the limited liability company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;
- (f) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of the managers who are to serve until the first meeting of members or until their successors are elected;
- (g) if the management of a limited liability company is reserved to the members, the names and street addresses of the members; and
- (h) any other provision, not inconsistent with law, that the members choose to include in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provision that is required or permitted to be included in the operating agreement of the limited liability company under this chapter.

(2) It is not necessary to include in the articles of organization any of the powers enumerated in this chapter.

**History:** C. 1953, 48-2b-116, enacted by L. 1991, ch. 258, § 17; 1992, ch. 168, § 5.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, deleted "the director of" before "the division" in Subsection (1)(e); redesignated former Subsection (1)(f)(i)

as (1)(f), (1)(f)(ii) as (1)(g), and (1)(g) as (1)(h); and made stylistic changes throughout Subsection (1).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-117. Filing of articles.**

(1) An original and one copy of the articles of organization and of any certificates of amendment, or of any judicial decree of amendment, shall be delivered to the division. A person who executes a certificate of amendment as an attorney-in-fact or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless it finds that the articles of organization do not conform to law as to their form, the division, upon receipt of all filing fees established under Section 63-38-3, shall:

- (a) place a stamp or seal on the original and the copy, indicating the time, day, month, and year of the filing, the name of the division, the signature of the division director, and the division's seal, or facsimiles of them;
- (b) file the signed original in its office; and
- (c) return the stamped copy to the person who filed it or as directed by the person who filed it.

(2) Upon the filing with the division of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of

amendment, and upon the effective date of a certificate of dissolution or of a judicial decree of cancellation, the articles of organization shall be canceled.

**History:** C. 1953, 48-2b-117, enacted by L. 1991, ch. 258, § 18.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-118. Effect of filing — Prefiling activities.**

(1) Upon the placement of a stamp or seal, as provided in Subsection 48-2b-117(1)(a), on the articles of organization, the limited liability company shall be considered organized.

(2) Except as against the state of Utah in a proceeding to cancel or revoke the certificate of organization or in a proceeding for involuntary dissolution of the limited liability company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this chapter.

(3) A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the division. Persons engaged in prefiling activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the limited liability company prior to the filing of its articles of organization with the division.

**History:** C. 1953, 48-2b-118, enacted by L. 1991, ch. 258, § 19.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-119. Records.**

(1) Each limited liability company shall keep at its principal place of business the following:

(a) a current list in alphabetical order of the full name and last known business street address of each member;

(b) a copy of the stamped articles of organization and all certificates of amendment to them, collectively referred to as the "certificate of organization," together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) copies of any financial statements of the limited liability company, if any, for the three most recent years;

(e) a copy of the limited liability company's operating agreement, if any; and

(f) unless otherwise set forth in the articles of organization, a written statement setting forth:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;

(ii) the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

(iii) any right of a member to receive distributions which include a return of all or any of the member's contributions; and

(iv) any event upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours. The division may subpoena any of these records if a limited liability company denies any member access to the records.

**History:** C. 1953, 48-2b-119, enacted by L. 1991, ch. 258, § 20; 1992, ch. 168, § 6.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, inserted Subsection (1)(e), redesignated former Subsection

(1)(e) as Subsection (1)(f), added the second sentence in Subsection (2), and made stylistic changes.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-120. Annual report.

(1) Each limited liability company and each foreign limited liability company authorized to transact business in this state shall file with the division, during the month of its anniversary date of formation, in the case of domestic limited liability companies, or during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited liability companies authorized to transact business in this state, an annual report setting forth:

(a) the name of the limited liability company and the state or country under the laws of which it is formed;

(b) the name and street address of the agent for service of process required to be maintained under Section 48-2b-123; and

(c) there is a change of the registered agent required to be maintained by Section 48-2b-123.

(2) The annual report shall be made on forms prescribed and furnished by the division, and the information contained on the annual report shall be given as of the date of execution of the report. The annual report forms shall include a statement notifying the limited liability company that failure to file the annual report will result in the suspension and eventual cancellation of its certificate of organization, in the case of a domestic limited liability company, or of its registration, in the case of a foreign limited liability company authorized to transact business in this state.

(3) The annual report shall be signed by any member under penalty of perjury. If the registered agent has changed since the last annual report, the annual report shall also be signed by the new registered agent.

(4) If the report conforms to the requirements of this chapter, the division shall file the report. If the report does not conform, the division shall mail the report first class postage prepaid to the limited liability company at the street address set forth for its agent for service of process in the certificate of organization or most recent report, for any necessary corrections. If a report is returned, the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the report is corrected and returned to the

division within 30 days from the date the nonconforming report was mailed to the limited liability company.

**History:** C. 1953, 48-2b-120, enacted by L. 1991, ch. 258, § 21.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-121. When amendments required.

(1) The articles of organization of a limited liability company shall be amended when:

- (a) there is a change in the name of the limited liability company;
- (b) there is a change in the character of the business of the limited liability company specified in the articles of organization;
- (c) there is a false or erroneous statement in the articles of organization;
- (d) there is a change in the time, as stated in the articles of organization, for the dissolution of the limited liability company;
- (e) there is a change in the names and street addresses of the managers of the limited liability company or, if the limited liability company is managed by its members, the names and street addresses of the members;
- (f) the members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the limited liability company; or
- (g) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among them.

(2) Each limited liability company shall file with the division a copy of any amendment to the articles within 60 days after the adoption of the amendment.

**History:** C. 1953, 48-2b-121, enacted by L. 1991, ch. 258, § 22; 1992, ch. 168, § 7.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, designated the formerly undesignated introductory language as Subsection (1); redesignated former Subsec-

tions (1) through (7) as Subsections (1)(a) through (1)(g); added Subsection (2); and made a punctuation change in Subsection (1)(e).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-122. Additional members.

After the filing of a limited liability company's original articles of organization, additional members may be admitted as provided in the operating agreement or, if the operating agreement does not provide for the admission of additional members, with the written consent of all members, except that, notwithstanding any provision in the operating agreement, no additional member may be admitted without the written consent of the members entitled to receive a majority of the profits of the company.

**History:** C. 1953, 48-2b-122, enacted by L. 1991, ch. 258, § 23.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-123. Registered agent.

(1) Each limited liability company shall continuously maintain an agent in this state for service of process on the limited liability company.

(2) This agent shall be an individual residing in this state, a domestic corporation, a foreign corporation authorized to do business in this state, or any member of the limited liability company.

(3) Failure to maintain a registered agent in this state shall be grounds for involuntary dissolution of the limited liability company by the division under Section 48-2b-142.

(4) The registered agent of a limited liability company may resign by filing an original and one copy of a signed written notice of resignation with the division. The division shall then mail a copy of the notice of resignation to the registered office of the limited liability company at the street address set forth in the limited liability company's articles of organization. The appointment of the registered agent ends 30 days after the division receives notice of the resignation.

**History:** C. 1953, 48-2b-123, enacted by L. 1991, ch. 258, § 24.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-124. Capital contributions.

The contributions to capital of a member to the limited liability company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

**History:** C. 1953, 48-2b-124, enacted by L. 1991, ch. 258, § 25.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-125. Management.

(1) The management of the limited liability company, unless otherwise provided in the articles of organization, shall be vested in its members in proportion to their interests in the profits of the limited liability company, as reflected in the operating agreement and as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members. If the management of the limited liability company is vested in the members, any member has authority to bind the limited liability company, unless otherwise provided in the articles of organization.

(2) If the articles of organization provide for the management of the limited liability company by a manager or managers, the manager or managers shall be any person elected by the members in the manner prescribed by and provided in the operating agreement of the limited liability company. If the management of the limited liability company is vested in a manager or managers, any manager has authority to bind the limited liability company, unless otherwise provided in the articles of organization. A manager shall serve for a term specified in the operating agreement. This term may not exceed the duration of the limited liability company as specified in the articles of organization.

(3) The manager or managers shall also hold the offices and have the responsibilities accorded to them by the members and as provided for in the operating agreement of the limited liability company.

**History:** C. 1953, 48-2b-125, enacted by L. 1991, ch. 258, § 26; 1992, ch. 168, § 8.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, added “unless otherwise provided in the articles of organiza-

tion” at the end of the second sentence in Subsections (1) and (2), and made stylistic changes.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### COLLATERAL REFERENCES

**Brigham Young Law Review.** — Utah Limited Liability Companies: The “Ugly Ducklings,” 1992 B.Y.U. L. Rev. 1091.

### 48-2b-126. Operating agreements.

(1) An operating agreement may be adopted with the unanimous consent of the members.

(2) An operating agreement may be altered, amended, or repealed as provided in the operating agreement of the limited liability company.

(3) The operating agreements may provide for the regulation and management of the affairs of the limited liability company in any manner not inconsistent with law or the articles of organization.

(4) The operating agreement may also provide for the removal of a manager or managers and for the termination of a member’s interest in the limited liability company. If a member’s interest in the limited liability company is terminated pursuant to the operating agreement, the member may rightfully demand a return of the member’s contribution pursuant to Section 48-2b-132.

**History:** C. 1953, 48-2b-126, enacted by L. 1991, ch. 258, § 27; 1992, ch. 168, § 9.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, rewrote Subsection (1), dividing it into Subsections (1) and (2),

and redesignated former Subsections (2) and (3) as Subsections (3) and (4).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-127. Ownership and disposition of property.

(1) Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance shall be made, in the name of the limited liability company.

(2) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if they are executed by one or more managers of a limited liability company having a manager or managers or if they are executed by one or more members of a limited liability company in which management has been retained by the members.

**History:** C. 1953, 48-2b-127, enacted by L. 1991, ch. 258, § 28.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-128. Conditions for property distribution.**

From time to time, the limited liability company may distribute its property to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the fair value of the assets of the limited liability company is in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions.

**History:** C. 1953, 48-2b-128, enacted by L. 1991, ch. 258, § 29.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-129. Assets distribution.**

Distributions of cash or other assets of a limited liability company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, cash or other assets shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. Value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by Section 48-2b-119.

**History:** C. 1953, 48-2b-129, enacted by L. 1991, ch. 258, § 30.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-130. Profits and losses.**

The profits and losses of a limited liability company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. Value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by Section 48-2b-119.

**History:** C. 1953, 48-2b-130, enacted by L. 1991, ch. 258, § 31.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-131. Transfer, adjustment, and assignment of member interests — Effect.**

(1) An interest of a member in a limited liability company may be adjusted, transferred, or assigned as provided in the operating agreement. However, if the nontransferring members entitled to receive a majority of the nontransferred profits of the limited liability company, pursuant to Section 48-2b-130, do not consent to the proposed transfer or assignment, the transferee of the interest of the member has no right to participate in the management of the business and affairs of the limited liability company or to become a member. In that event, the transferee is entitled to receive only the share of

profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

(2) A member of a limited liability company organized to render professional services may voluntarily transfer his shares in a limited liability company only to a person who is licensed or registered by the jurisdiction in which the person resides to render the same type of professional services as those for which the company was organized. Any transfer of a member's interest in a limited liability company in violation of this section is void.

**History:** C. 1953, 48-2b-131, enacted by L. 1991, ch. 258, § 32.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-132. Conditions for distribution of property — Return of contribution.**

(1) A member shall receive no distribution of limited liability company property on account of any member's contribution to capital until:

(a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or sufficient property of the company remains to pay them; and

(b) the consent of all members is obtained, unless the return of the contribution to capital may be rightfully demanded as provided in this chapter, the articles of organization, or the operating agreement.

(2) Subject to Subsection (1), a member may rightfully demand the return of the member's contribution:

(a) upon the dissolution of the limited liability company;

(b) when the date an event specified in the articles of organization for the return of the contribution has arrived; or

(c) after the member has given all other members of the limited liability company six months' prior notice in writing, if no other time period is specified in the articles of organization for the dissolution of the limited liability company.

(3) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of the member's contribution, has only the right to demand and receive cash in return for the member's contribution to capital.

**History:** C. 1953, 48-2b-132, enacted by L. 1991, ch. 258, § 33.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-133. Member liabilities.**

(1) A member of a limited liability company is liable to the company:

(a) for the difference between the amount of the member's contributions to capital which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to capital which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.



(2) A member holds as trustee for the limited liability company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully paid or conveyed to the member on account of the member's contribution.

(3) The liabilities of a member as set out in this section may be waived or compromised upon the consent of all other members. This waiver or compromise does not affect the rights of a creditor of the limited liability company who extended credit or whose claim arose prior to the dissolution of the limited liability company.

(4) When a member has rightfully received the return, in whole or in part, of his or her capital contribution, the member remains liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge the limited liability company's obligations to all creditors of the limited liability company who extended credit or whose claims arose before the return.

**History:** C. 1953, 48-2b-133, enacted by L. 1991, ch. 258, § 34.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-134. Execution of documents.**

(1) Unless otherwise specified in this chapter, each certificate or report required by this chapter to be filed with the division shall be executed in the following manner:

(a) articles of organization shall be signed by two members or two managers;

(b) the certificate of amendment shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement, and by each other member designated in the certificate of amendment as a new member;

(c) the annual report shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement, and, if the registered agent has changed subsequent to the filing of the articles of organization or the last annual report, by the registered agent; and

(d) articles of dissolution shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement.

(2) Any person may sign any certificate or articles by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a member shall specify the admission of the member. Powers of attorney relating to the signing of a certificate by an attorney-in-fact need not be filed with the division but shall be retained by the company.

(3) The execution of articles of organization or dissolution or of a certificate of amendment by a member constitutes an oath or affirmation, under the penalties of perjury, that the facts stated in the articles or certificate are true and that any power of attorney used in connection with the execution of the articles or certificate is proper in form and substance.

**History:** C. 1953, 48-2b-134, enacted by L. 1991, ch. 258, § 35; 1992, ch. 168, § 10.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, substituted “two

members or two managers” for “all members” in Subsection (1)(a).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-135. Penalty for false execution.

Each member or manager of a limited liability company who signs any articles, certificate, statement, report, application, or other document filed with the division that is known to that member or manager to be false in any material respect is guilty of a class B misdemeanor.

**History:** C. 1953, 48-2b-135, enacted by L. 1991, ch. 258, § 36.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**Cross-References.** — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

### 48-2b-136. Restated articles of organization.

(1) A limited liability company may integrate into a single instrument all of the provisions of its articles of organization and amendments to them, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or instrument that was executed and filed pursuant to this chapter, they shall be specifically designated in their heading as “Restated Articles of Organization”, together with other words that the company considers appropriate, and shall be executed and filed with the division.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as “Amended and Restated Articles of Organization”, together with other words that the company considers appropriate, and shall be executed and filed with the division.

(4) (a) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the company’s present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the division. Restated articles shall also state that they were duly executed and filed in accordance with this section.

(b) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of the restated articles of organization with the division, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this chapter, not inconsistent with this section, that would apply if a separate certificate of amendment were filed to make the amendment or change.

**History:** C. 1953, 48-2b-136, enacted by L. 1991, ch. 258, § 37.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-137. Dissolution.

A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the limited liability company in its articles of organization or operating agreement expires;

(2) by written agreement signed by the members entitled to receive a majority of the profits of the limited liability company, unless otherwise provided in the operating agreement;

(3) except as provided otherwise in the operating agreement, upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or upon the occurrence of any other event that terminates the continued eligibility for membership of a member in the limited liability company, unless the business of the limited liability company is continued by the members:

(a) under a right to continue the business, as provided in the operating agreement, but only in accordance with the terms, conditions, and provisions specified in the operating agreement; or

(b) if the right to continue is not specified in the operating agreement, by the consent of all remaining members within 90 days after the event of termination; or

(4) when the limited liability company is not the successor limited liability company in the merger or consolidation of two or more limited liability companies.

**History:** C. 1953, 48-2b-137, enacted by L. 1991, ch. 258, § 38; 1992, ch. 168, § 11.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, in Subsection (3), added "except as provided otherwise in the operating agreement" and rewrote the subsection after "continued by the" near the end of the now-introductory paragraph, which had

read "consent of the remaining members entitled to receive a majority of the capital of the limited liability company under a right to do so stated in the articles of organization or operating agreement within 90 days after the event of termination."

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-138. Settlement upon dissolution.

(1) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(a) liabilities to creditors, in the order of priority as provided by law, except those liabilities to members of the limited liability company on account of their contributions;

(b) except as provided in the operating agreement, liabilities to members of the limited liability company in respect of their contributions to capital; and

(c) liabilities to members of the limited liability company in respect of their shares of the profits and other compensation by way of income on their contributions.

(2) Members shall share in the limited liability company assets as provided in the operating agreement, or if not so provided, in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

**History:** C. 1953, 48-2b-138, enacted by L. 1991, ch. 258, § 39.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-139. Articles of dissolution.**

When all debts, liabilities, and obligations of the limited liability company have been paid or discharged, or adequate provision has been made to do so, and all of the remaining property and assets of the limited liability company have been distributed to the members, articles of dissolution shall be executed. The articles shall set forth:

- (1) the name of the limited liability company;
- (2) that all state taxes payable, debts, obligations, and liabilities have been paid or discharged, or that adequate provision has been made to do so;
- (3) that all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and
- (4) that there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit.

**History:** C. 1953, 48-2b-139, enacted by L. 1991, ch. 258, § 40.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-140. Filing of articles of dissolution — Effect.**

(1) The articles of dissolution of a limited liability company shall be filed with the division. If the articles of dissolution conform to law and all fees have been paid as prescribed in this chapter, the division shall file the articles of dissolution of the company and shall issue a certificate of dissolution and return it to the representative of the dissolved limited liability company.

(2) Upon the issuance of the certificate of dissolution, the existence of the company shall cease, except for the purpose of suits, other proceedings, and appropriate actions as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of the managers, or, if none, the members, shall thereafter become trustees for the members and creditors of the dissolved limited liability company. In this capacity, the trustees may distribute any company property discovered after dissolution, convey real estate, and take other necessary action on behalf of and in the name of the dissolved limited liability company.

**History:** C. 1953, 48-2b-140, enacted by L. 1991, ch. 258, § 41.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-141. Cancellation of articles of organization.

The articles of organization of a limited liability company shall be canceled by the division upon issuance of the certificate of dissolution.

**History:** C. 1953, 48-2b-141, enacted by L. 1991, ch. 258, § 42.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### 48-2b-142. Involuntary dissolution.

(1) A limited liability company may be dissolved involuntarily by order of any court of competent jurisdiction in an action filed by the attorney general or the director of the division when it is established that the limited liability company:

(a) obtained the issuance of its certificate of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of its filing;

(b) continually exceeded or abused the authority conferred upon it by law or by the operating agreement;

(c) committed a violation of any provision of law whereby it has forfeited its charter;

(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of the state; or

(f) failed to amend its articles of organization as required by Section 48-2b-121.

(2) A limited liability company or a foreign liability company registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) Unless the limited liability company's certificate of organization is already suspended for any reason, the division shall mail a notice of delinquency of each delinquent limited liability company to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. The notice of delinquency shall state:

(i) the nature of the delinquency;

(ii) that the limited liability company shall be suspended, unless it corrects the delinquency and pays a notification fee within 30 days of the mailing of the notice of delinquency; and

(iii) that a suspended limited liability company may be reinstated only after payment of a reinstatement fee.

(b) A notice of delinquency shall be mailed first class, postage prepaid.

(c) The division shall include with the notice any forms necessary to correct the delinquency.

(d) The division shall assess the limited liability company a notification fee, as determined under Section 63-38-3.

(4) (a) A limited liability company, or a foreign limited liability company registered in this state, that remains delinquent for more than 30 days after the mailing of the notice of delinquency under this section shall be suspended.

(b) Unless the limited liability company's certificate of organization is already suspended for any reason, if a limited liability company is suspended under this section, the division shall mail a notice of suspension to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization.

(c) The notice of suspension shall state:

(i) that the certificate of organization has been suspended;

(ii) the reason for the suspension;

(iii) the date of the suspension;

(iv) that the limited liability company may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division in accordance with Section 63-38-3, in addition to any fees required by Subsection (3); and

(v) that the limited liability company's certificate of organization will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited liability company has removed the suspension before that time.

(5) The division shall include an annual report form in the notice of suspension if the suspension is due to failure to file an annual report.

(6) If the limited liability company does not remove the suspension within one year after the date of mailing of the notice of suspension, the limited liability company's certificate of organization may be canceled involuntarily by the director of the division. The division shall mail a certificate of cancellation to the managers of the limited liability company at the address set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. No canceled limited liability company may be reinstated, except as set forth in Subsection (7). Any assumed names filed on behalf of the canceled limited liability company under Section 48-2b-106 also are canceled. The name of a canceled limited liability company and any assumed names on its behalf are not available for one year from the date of cancellation for use by any other person transacting business in this state, or person doing business under an assumed name under Section 48-2b-106.

(7) Any limited liability company whose certificate of organization has been canceled under Section 48-2b-141 or Section 48-2b-142 may be reinstated within one year following cancellation upon application and payment of all penalties and reinstatement fees.

(8) A member of a limited liability company has no personal liability solely by reason of the limited liability company having had its certificate of organization suspended or canceled.

(9) A limited liability company that has had its certificate or registration suspended or canceled may not maintain any action, suit, or proceeding in any court of this state until it has removed the suspension or reinstated its certificate or registration following cancellation.

**History:** C. 1953, 48-2b-142, enacted by L. 1991, ch. 258, § 43.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-143. Foreign limited liability companies.**

(1) This chapter does not govern the organization and internal affairs of a foreign limited liability company.

(2) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the state of Utah.

**History:** C. 1953, 48-2b-143, enacted by L. 1991, ch. 258, § 44.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-144. Registration of foreign limited liability companies.**

(1) Before doing business in this state, a foreign limited liability company shall register with the division by submitting to the division:

(a) the fee required by this chapter;

(b) an original certificate of fact or good standing from the office of the secretary of state or other responsible authority of the home state of the foreign limited liability company; and

(c) an original copy executed by a member, together with a duplicate copy, of an application for registration as a foreign limited liability company, setting forth:

(i) the name of the foreign limited liability company and, if that name is not available in this state, the name under which it proposes to register and transact business in this state;

(ii) the state or other jurisdiction or country where organized and the date of its organization;

(iii) the nature of the business or purposes to be conducted or promoted in the state of Utah;

(iv) the street address of the registered office and the name and street address of the registered agent for service of process;

(v) an irrevocable written consent of the foreign limited liability company that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on its registered agent, and if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found, then on the director of the division, and stipulating and agreeing that this service shall be taken and held, in all courts, to be as valid and binding as if service had been made upon the members of the foreign limited liability company;

(vi) the name and business or residence street address of each of the members; and

(vii) the date on which the foreign limited liability company first intends to do business in the state of Utah.

(2) If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the division a certificate, executed by a member, correcting the statement, together with payment of any fee required by this chapter.

**History:** C. 1953, 48-2b-144, enacted by L. 1991, ch. 258, § 45.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-145. Cancellation of foreign limited liability companies' registration.**

(1) A foreign limited liability company may cancel its registration by filing with the division a certificate of cancellation of registration signed under penalty of perjury by a member.

(2) A cancellation of registration does not terminate the authority of the director of the division to accept service of process on the foreign limited liability company with respect to claims for relief and causes of action against the foreign limited liability company arising before the cancellation of registration.

(3) The certificate of cancellation of registration shall be made on forms prescribed and furnished by the division, and the information contained on the certificate of cancellation of registration shall be given as of the date of execution of the certificate.

**History:** C. 1953, 48-2b-145, enacted by L. 1991, ch. 258, § 46.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-146. Effect of registration.**

(1) A foreign limited liability company doing business in the state of Utah may not maintain any action, suit, or proceeding in this state until it has registered in this state and has paid to the state all fees and penalties of the years, or parts of years, during which it did business in the state without having registered.

(2) The failure of a foreign limited liability company to register in this state does not:

(a) impair the validity of any contract or act of the foreign limited liability company;

(b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(c) prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member of a foreign limited liability company is not personally liable for the acts of the foreign limited liability company solely by reason of failure of the limited liability company to register prior to the commencement of business in this state.



**History:** C. 1953, 48-2b-146, enacted by L. 1991, ch. 258, § 47; 1992, ch. 30, § 91.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, inserted "company" near the end of Subsection (3).

### **48-2b-147. Effect of failure to register by foreign limited liability companies.**

The division may order any foreign limited liability company, or any agent of a foreign limited liability company, to cease doing any business in the state of Utah if the foreign limited liability company has failed to register under this chapter.

**History:** C. 1953, 48-2b-147, enacted by L. 1991, ch. 258, § 48.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-148. Foreign limited liability companies — Service of process — Cause of action.**

(1) Service of process in any action against any foreign limited liability company, whether or not that foreign limited liability company is qualified to do business in this state, shall be made in the manner prescribed by Rule 4, Utah Rules of Civil Procedure.

(2) Any person who has a cause of action against any foreign limited liability company, whether or not the limited liability company is qualified to do business in this state, may file suit against the limited liability company in the district court of a county in which there is proper venue if the cause of action arose in Utah out of the limited liability company's doing business in Utah or while the limited liability company was doing business in Utah.

**History:** C. 1953, 48-2b-148, enacted by L. 1991, ch. 258, § 49.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

### **48-2b-149. Merger and consolidation.**

(1) Pursuant to any agreement ratified by a majority, by sharing ratios, of the members, a domestic limited liability company may merge or consolidate with or into one or more limited liability companies formed under the laws of this state or any other state. The successor limited liability company shall be as provided in the agreement.

(2) A domestic limited liability company that is not the successor limited liability company in the merger or consolidation shall file articles of dissolution, which shall have an effective date not later than the effective date of the merger or consolidation.

(3) If, following a merger or consolidation of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the successor limited liability company is not a domestic limited liability company, there shall be attached to the articles of dissolution for each such domestic limited liability company articles of merger or consolidation executed by the successor limited liability company:

(a) stating that the successor limited liability company may be served with process in the state of Utah in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the director of the division as the successor limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process shall be mailed to the successor limited liability company by the director of the division.

(4) When the articles of dissolution required by Subsection (2) have become effective, the following shall be vested in and enforced against the successor limited liability company as they were in each of the limited liability companies that have merged or consolidated:

(a) all of the rights, privileges, and powers of each of the limited liability companies that have merged or consolidated;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies.

**History:** C. 1953, 48-2b-149, enacted by L. 1991, ch. 258, § 50; 1992, ch. 168, § 12.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, inserted "ratified by a majority, by sharing ratios, of the

members" in the first sentence in Subsection (1).

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-150. Right of action.**

A member may bring an action in the right of a limited liability company to recover a judgment in its favor if the managers with authority to do so have refused to bring the action and the managers' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those managers to bring the action is not likely to succeed.

**History:** C. 1953, 48-2b-150, enacted by L. 1991, ch. 258, § 51.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

#### **48-2b-151. Proper plaintiff.**

In a derivative action, the plaintiff must be a member at the time of bringing the action and:

(1) must have been a member at the time of the transaction of which the member complains; or

(2) the member's status as a member must have devolved upon him by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

**History:** C. 1953, 48-2b-151, enacted by L. 1991, ch. 258, § 52.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-152. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a manager or the reasons for not making the effort.

**History:** C. 1953, 48-2b-152, enacted by L. 1991, ch. 258, § 53.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-153. Expenses.**

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

**History:** C. 1953, 48-2b-153, enacted by L. 1991, ch. 258, § 54.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-154. Security and costs.**

(1) In any action instituted in the right of any limited liability company or foreign limited liability company, unless the contributions to the company property that are allocable to the plaintiff amount to 5% or more of the contributions of all members, or the contributions that are allocable to the plaintiff have a market value in excess of \$25,000, the limited liability company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the limited liability company may become legally liable, but not including attorneys' fees.

(2) Market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervenor, as of the date that he becomes a party to the action.

(3) The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased by the court, upon showing that the security provided has or may become inadequate or is excessive.

(4) The limited liability company shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of such action if the court finds the action was brought without reasonable cause.

**History:** C. 1953, 48-2b-154, enacted by L. 1991, ch. 258, § 55.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-155. Indemnification of a manager.**

To the extent that a manager has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the manager under Section 48-2b-150, or in defense of any claim, issue, or matter therein, the manager shall be indemnified by the members against expenses, including attorneys' fees, that the manager actually and reasonably incurred.

**History:** C. 1953, 48-2b-155, enacted by L. 1991, ch. 258, § 56.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-156. Correction of technical errors in instruments.**

(1) If any instrument filed under this chapter contains, as of the date of the action referred to in the instrument, a typographical error, misspelling, or other technical error or defect, the instrument may be corrected by filing, in accordance with this section, a statement of correction.

(2) The statement of corrections shall set forth:

- (a) the name of the limited liability company and the state or country under whose laws it is organized;
- (b) the title of the instrument being corrected and the date it was filed with the division; and
- (c) the error, misspelling, or defect to be corrected and the portion of the instrument being corrected in corrected form.

(3) A statement of corrections shall be executed in the same manner in which the instrument being corrected was required to be executed.

(4) The corrected instrument is effective as of the date the original instrument was filed.

**History:** C. 1953, 48-2b-156, enacted by L. 1991, ch. 258, § 57.

**Effective Dates.** — Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

**48-2b-157. Application of partnership provisions to limited liability companies.**

"Partnership" and "limited partnership," when used in any chapter or title other than this chapter, Title 48, Chapter 1, General Partnership, and Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, are considered to include a limited liability company organized under this chapter, unless the context requires otherwise.

**History:** C. 1953, 48-2b-157, enacted by L. 1992, ch. 168, § 13.

**Effective Dates.** — Laws 1992, ch. 168 be-

came effective on April 27, 1992, pursuant to Utah Const., Art. VI, Sec. 25.