

Chapter 63

1993 EDITION

Limited Liability Companies

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GENERAL PROVISIONS**(Definitions)**

63.001 Definitions. As used in this chapter:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of organization in the case of a domestic limited liability company.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign limited liability company.

(2) "Articles of organization" means the document described in ORS 63.047 for the purpose of forming a limited liability company, including articles of organization as they may be amended or restated.

(3) "Bankruptcy" includes bankruptcy under federal bankruptcy law.

(4) "Contribution" means anything of value which a person contributes to the limited liability company as a prerequisite for or in connection with membership including cash, property or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

(5) "Corporation" or "domestic corporation" means a corporation for profit incorporated under ORS chapter 60.

(6) "Distribution" means a direct or indirect transfer of money or other property, except of a limited liability company's own interests, or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of any of its member's interests. A distribution may be in the form of a declaration or payment of profits, a purchase, retirement or other acquisition of interests, a distribution of indebtedness, or otherwise.

(7) "Entity" includes a domestic or foreign limited liability company, corporation, foreign corporation, domestic or foreign non-profit corporation, profit or non-profit unincorporated association, business trust, estate, domestic or foreign general or limited partnership, trust, two or more persons having a joint or common economic interest, any state, the United States or any foreign government.

(8) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(9) "Foreign limited liability company" means an entity that is an unincorporated association that is organized under the laws of a state other than of this state or under

the laws of any foreign country and that is organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.

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

(11) "Individual" means a natural person.

(12) "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association having two or more members that is organized under this chapter.

(13) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under ORS chapter 70 and having one or more general partners and one or more limited partners.

(14) "Manager" or "managers" means a person or persons designated by the members of a limited liability company in accordance with ORS 63.135 to manage the limited liability company's business and affairs.

(15) "Member" or "members" means a person or persons with both an ownership interest in a limited liability company and all the rights and obligations of a member specified under this chapter. "Member" does not include an assignee of an ownership interest who has not also acquired the voting and other rights appurtenant to membership.

(16) "Membership interest" or "interest" means a member's collective rights in a limited liability company, including the member's share of profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets and any right to vote or participate in management.

(17) "Office," when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

(18) "Operating agreement" means any valid agreement, written or oral, of the members as to the affairs of a limited liability company and the conduct of its business.

(19) "Organizer" means one of the signers of the initial articles of organization.

(20) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(21) "Person" means an individual or entity.

(22) "Proceeding" means any threatened, pending or completed action, suit or proceeding whether civil, criminal, administra-

tive or investigatory and whether formal or informal.

(23) "State," when referring to a part of the United States, includes a state, commonwealth, territory or insular possession of the United States and its agencies and governmental subdivisions.

(24) "United States" includes a district, authority, bureau, commission, department or any other agency of the United States. [1993 c.173 §2]

(Filing Documents)

63.004 Filing requirements. (1) A document must satisfy the requirements of this section, as modified by any other provision of this chapter, to be entitled to filing by the Secretary of State.

(2) This chapter must require or permit filing the document with the office.

(3) The document shall contain the information required by this chapter. It may contain other information as well.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign limited liability companies under ORS 63.707 need not be in English if accompanied by a reasonably authenticated English translation.

(6) Unless otherwise specified in this chapter, each document or report required by this chapter to be filed with the office shall be executed in the following manner:

(a) Articles of organization shall be signed by or on behalf of one or more persons wishing to form the limited liability company.

(b) Articles of amendment shall be signed by at least one member or manager.

(c) Each annual report shall be signed by one member or manager.

(d) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, a document or report shall be signed by that receiver, trustee or fiduciary.

(7) The person executing the document shall state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may, but is not required to, contain an acknowledgment, verification or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under ORS 63.016, the document must be in or on the prescribed form.

(9) The document must be delivered to the office accompanied by the required fees.

(10) Delivery of a document to the office is accomplished only when the document is actually received by the office. [1993 c.173 §3]

63.007 Filing, service and copying fees.

(1) The Secretary of State shall collect the following fees for the documents delivered for filing:

<u>Document</u>	<u>Fee</u>
(a) Articles of organization	\$ 40
(b) Application for reserved name	\$ 10
(c) Application for registered name	\$ 100
(d) Application of a domestic limited liability company for reinstatement following administrative dissolution	\$ 30
(e) Application for registration of a foreign limited liability company	\$ 440
(f) Annual report of domestic limited liability company	\$ 30
(g) Annual report of a foreign limited liability company	\$ 220
(h) Certificate of existence or authorization	\$ 10
(i) Application of a foreign limited liability company for reinstatement following administrative revocation	\$ 50
(j) Amendments to articles of organization	\$ 10
(k) Restated articles of organization	\$ 10
(L) Mergers	\$ 10
(m) Change of registered agent or office	\$ 10
(n) Registered agent resignations	\$ 10

(2) The Secretary of State shall collect a fee of \$20 each time process is served on the Secretary of State under ORS 63.121 and 63.731.

(3) The Secretary of State by rule may establish fees in addition to those provided for in subsections (1) and (2) of this section for:

(a) Copying any public record maintained by the office and relating to a domestic or foreign limited liability company and for certifying the copy.

(b) Certifying to other facts of record pursuant to ORS 63.027. [1993 c.173 §4]

63.010 [Repealed by 1959 c.580 §104]

63.011 Effective time and date of document. (1) Except as provided in subsection (2) of this section and ORS 63.014 (3), a document accepted for filing is effective on the date it is filed by the Secretary of State and at the time, if any, specified in the document as its effective time or at 12:01 a.m. on that date if no effective time is specified.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a

document specifies a delayed effective date but no time, the document becomes effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed. [1993 c.173 §5]

63.014 Correcting filed document. (1) A domestic or foreign limited liability company may correct a document filed by the Secretary of State, other than an annual report, if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged.

(2) A domestic or foreign limited liability company shall correct a document by delivering articles of correction to the office. The articles shall include the following:

(a) A description of the document, including its filing date, or a copy of the document.

(b) The incorrect statement and the reason it is incorrect, or a description of the manner in which the execution, attestation, seal, verification or acknowledgment is defective.

(c) A correction of the incorrect statement or defective execution, attestation, seal, verification or acknowledgment.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [1993 c.173 §6]

63.016 Forms. (1) Upon request, the Secretary of State shall furnish forms for:

(a) A foreign limited liability company's application for authority to transact business in this state;

(b) A foreign limited liability company's application for withdrawal; and

(c) An annual report.

(2) The Secretary of State may by rule require the use of the forms listed under subsection (1) of this section.

(3) Upon request, the Secretary of State shall furnish forms for other documents required or permitted to be filed by this chapter. Use of such forms is not required. [1993 c.173 §7]

63.017 Filing duty of Secretary of State. (1) If a document delivered to the office for filing satisfies the requirements of ORS 63.004, the Secretary of State shall file it.

(2) The Secretary of State files a document by indicating thereon that it has been filed by the Secretary of State and the date

of filing. After filing a document, the Secretary of State shall return a copy to the domestic or foreign limited liability company or its representative.

(3) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within 10 business days after the document was delivered together with a brief written explanation of the reason for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State is not required to verify or inquire into the legality or truth of any matter included in any document delivered to the office for filing. The Secretary of State's filing or refusing to file a document does not:

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

(b) Relate to the correctness or incorrectness of information contained in the document.

(5) The Secretary of State's refusal to file a document does not create a presumption that the document is invalid or that information contained in the document is incorrect. [1993 c.173 §8]

63.020 [Repealed by 1959 c.580 §104]

63.021 Appeal from Secretary of State's refusal to file document. If the Secretary of State refuses to file a document delivered to the office for filing, the domestic or foreign limited liability company, in addition to any other legal remedy which may be available, shall have the right to appeal from such order pursuant to the provisions of ORS 183.310 to 183.550. [1993 c.173 §9]

63.024 Evidentiary effect of copy of filed document. (1) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature, which may be in facsimile, is conclusive evidence that the document or a facsimile thereof is on file with the office.

(2) The provisions of ORS 56.110 shall apply to all documents filed pursuant to this chapter. [1993 c.173 §10]

63.027 Certificate of existence or authorization. (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

(2) A certificate of existence or authorization when issued means that:

(a) The domestic limited liability company's name or the foreign limited liability company's name is registered in this state;

(b) The domestic limited liability company is duly organized under the laws of this state or the foreign limited liability company is authorized to transact business in this state;

(c) All fees payable to the Secretary of State under this chapter have been paid, if nonpayment affects the existence or authorization of the domestic or foreign limited liability company;

(d) An annual report required by ORS 63.787 has been filed by the Secretary of State within the preceding 14 months; and

(e) Articles of dissolution or an application for withdrawal have not been filed by the Secretary of State.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state. [1993 c.173 §11]

63.030 [Repealed by 1959 c.580 §104]

(Secretary of State)

63.031 Powers. The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this chapter. [1993 c.173 §12]

(Notice)

63.034 Notice. (1) Except as provided in subsection (3) of this section, notice under this chapter shall be in writing unless oral notice is specifically permitted under the circumstances by the articles of organization or any operating agreement.

(2) Notice may be communicated in person, by telephone, facsimile, telegraph, teletype or other form of wire or wireless communication, or by mail or private carrier.

(3) Written notice by a domestic or foreign limited liability company to a member or manager, if in a comprehensible form, is effective when mailed if it is mailed postpaid and is correctly addressed to the member's address shown in the limited liability company's current record of members or the manager's address shown in the limited liability company's records. All notices required by this chapter by a limited liability company to its members shall be in writing.

(4) Written notice to a domestic limited liability company or to a foreign limited liability company authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic or foreign limited liability com-

pany or its manager or managers at its principal office or mailing address as shown in the records of the office.

(5) Except as provided in subsection (3) of this section, or unless the articles of organization or any operating agreement provides otherwise for notices to managers, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of organization or any operating agreement prescribes notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern. [1993 c.173 §13]

63.040 [Repealed by 1959 c.580 §104]

ORGANIZATION

63.044 Formation. One or more individuals 18 years of age or older or other entities may form a limited liability company by executing and delivering articles of organization to the office for filing. Organizers need not be members of the limited liability company. [1993 c.173 §14]

63.047 Articles of organization. (1) The articles of organization shall set forth:

(a) The name of the limited liability company which satisfies the requirements of ORS 63.094;

(b) The address, including street and number, and mailing address, if different, of the limited liability company's initial registered office and the name of its initial registered agent at that office;

(c) A mailing address to which notices, as required by this chapter, may be mailed until an address has been designated by the limited liability company in its annual report;

(d) If the limited liability company is to be managed by a manager or managers, a statement to that effect;

(e) The name and address of each organizer; and

(f) The latest date on which the limited liability company is to dissolve or a statement that its existence is perpetual.

(2) The articles of organization may set forth any other provisions, not inconsistent with law, for the regulation of the internal affairs of the limited liability company, including any provision that is required or permitted to be included in any operating agreement of the limited liability company under this chapter.

(3) The articles of organization need not set forth any of the powers enumerated in this chapter. [1993 c.173 §15]

63.050 [Repealed by 1959 c.580 §104]

63.051 Organization. (1) Unless a delayed effective date is specified in the articles of organization, the limited liability company's existence begins when the articles of organization are filed by the Secretary of State.

(2) The Secretary of State's filing of the articles of organization is conclusive proof that all conditions precedent to organization were satisfied except in a proceeding by the state to cancel or revoke the organization or involuntarily dissolve the limited liability company. [1993 c.173 §16]

63.054 Liability for preorganization transactions. All persons purporting to act as or on behalf of a limited liability company, knowing the limited liability company was not then in existence, are jointly and severally liable for all liabilities created while so acting. [1993 c.173 §17]

63.057 Operating agreements. The operating agreement, if any, 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 and may be in writing or oral. Unless the articles of organization provide otherwise, an operating agreement may be adopted by a majority vote of the members determined as provided in ORS 63.150. [1993 c.173 §18]

63.060 [Repealed by 1959 c.580 §104]

63.070 [Repealed by 1959 c.580 §104]

PURPOSES AND POWERS

63.074 Purposes. (1) Except as otherwise provided by the laws of this state and in this section, a limited liability company formed under this chapter may conduct or promote any lawful business or purpose which a partnership or corporation may conduct or promote, unless a more limited purpose is set forth in the articles of organization.

(2) Notwithstanding subsection (1) of this section, a limited liability company may not

render professional service, as defined in ORS 58.015, in this state.

(3) A business that is subject to regulation under another statute of this state may not be organized under this chapter if the business is required to be organized under the other statute. [1993 c.173 §19]

63.077 General powers. (1) Unless its articles of organization provide otherwise, the duration of a limited liability company shall be 30 years.

(2) Unless its articles of organization provide otherwise, and subject to the provisions of ORS 63.074 (2), each limited liability company organized under this chapter may:

(a) Sue and be sued, and complain and defend in all courts in its own name;

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

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

(d) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, and otherwise use or deal in or with other interests in or obligations of any other entity;

(e) Make contracts or guarantees, incur liabilities, borrow money, issue its notes or other obligations that may be convertible into other securities of the limited liability company or include the option to purchase other securities of the limited liability company, or secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(f) Lend money, invest or reinvest its funds, or receive and hold real or personal property as security for repayment of funds so loaned, invested or reinvested;

(g) Be a promoter, incorporator, general partner, limited partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(h) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(i) Elect or appoint managers, employees or agents of the limited liability company, define their duties, fix their compensation and lend them money and credit;

(j) Make and alter an operating agreement, not inconsistent with its articles of organization or with the laws of this state,

for managing its business and regulating its affairs;

(k) Pay pensions and establish pension plans, profit-sharing plans, and benefit or incentive plans for any or all of its current or former managers, members, employees and agents;

(l) Make donations for the public welfare or for charitable, scientific or educational purposes;

(m) Transact any lawful business that will aid governmental policy;

(n) Indemnify a member or manager or any other person as and to the extent not inconsistent with the provisions of this chapter;

(o) Cease its activities and dissolve; and

(p) Have and exercise all powers and do every other act not inconsistent with law which is necessary or convenient to promote and effect any or all of the purposes for which the limited liability company is organized. [1993 c.173 §20]

NAME

63.094 Limited liability company name. (1) The name of the limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C."

(2) A limited liability company name shall not contain the word "cooperative," "corporation," "corp.," "incorporated," "Inc.," "limited partnership," "L.P." or "partnership" or any abbreviation or derivation of any of the foregoing.

(3) A limited liability company name shall be written in the alphabet used to write the English language and may include Arabic and Roman numerals and incidental punctuation.

(4) A limited liability company name shall be distinguishable upon the records of the office from any other limited liability company name, corporate name, professional corporate name, nonprofit corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the office.

(5) The limited liability company name need not satisfy the requirement of subsection (4) of this section if the applicant delivers to the office a certified copy of a final judgment of a court of competent jurisdiction that finds that the applicant has a prior or concurrent right to use the limited liability company name in this state.

(6) The provisions of this section do not prohibit a limited liability company from

transacting business under an assumed business name.

(7) The provisions of this section do not:

(a) Abrogate or limit the law governing unfair competition or unfair trade practices; or

(b) 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 trade names. [1993 c.173 §21]

63.097 Reserved name. (1) A person may apply to the office to reserve a limited liability company name. The application must set forth the name and address of the applicant and the name proposed to be reserved.

(2) If the Secretary of State finds that the limited liability company name applied for conforms to ORS 63.094, the Secretary of State shall reserve the name for the applicant for a 120-day period.

(3) A person may transfer the reservation of a limited liability company name to another person by delivering to the office a notice of the transfer executed by the person for whom the name was reserved and specifying the name and address of the transferee. [1993 c.173 §22]

63.101 Registered name. (1) A foreign limited liability company may apply to the office to register its name.

(2) The application must set forth the limited liability company name, the state or country of its organization, the date of its organization and a brief description of the nature of the business in which it is engaged and a statement that it is not carrying on or doing business in the State of Oregon. The application must be accompanied by a certificate of existence or a document of similar import current within 60 days of delivery, duly authenticated by the official having custody of the limited liability company records in the state or country under whose law it is organized.

(3) If the Secretary of State finds that the name conforms to ORS 63.094, the Secretary of State shall register the name effective for one year. [1993 c.173 §23]

63.110 [Repealed by 1959 c.580 §104]

OFFICE AND AGENT

63.111 Registered office and registered agent. (1) Each limited liability company shall continuously maintain in this state a registered agent and registered office that may be, but need not be, the same as any of its places of business.

(2) A registered agent shall be:

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

(b) A domestic limited liability company, a domestic corporation or nonprofit domestic corporation whose business office is identical to the registered office; or

(c) A foreign limited liability company, foreign corporation or nonprofit foreign corporation authorized to transact business in this state whose business office is identical to the registered office. [1993 c.173 §24]

63.114 Change of registered office or registered agent. (1) A limited liability company may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a statement of change that sets forth:

(a) The name of the limited liability company;

(b) If the registered office is to be changed, the address including street and number of the new registered office;

(c) If the registered agent is to be changed, the name of the new registered agent and that the new agent has consented to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent shall change the street address of the registered office of the limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the office of the Secretary of State a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

(3) The filing of the statement by the Secretary of State shall terminate the existing registered office or agent, or both, on the effective date of the filing and establish the newly appointed registered office or agent, or both, as that of the limited liability company. [1993 c.173 §25]

63.117 Resignation of registered agent.

(1) A registered agent may resign as agent upon delivering a signed statement to the office and giving notice in the form of a copy of the statement to the limited liability company. The statement may include a statement that the registered office is also discontinued.

(2) Upon delivery of the signed statement, the Secretary of State shall file the

resignation statement. The copy of the statement given to the limited liability company under subsection (1) of this section shall be addressed to the limited liability company at its mailing address or its principal office as shown by the records of the office of the Secretary of State.

(3) The agency appointment is terminated and the registered office discontinued, if so provided, on the 31st day after the date on which the statement was filed by the Secretary of State, unless the limited liability company shall sooner appoint a successor registered agent as provided in ORS 63.114 thereby terminating the capacity of such agent. [1993 c.173 §§26,105]

63.121 Service on limited liability company. (1) The registered agent appointed by a limited liability company shall be an agent of the limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the limited liability company may be served.

(2) The Secretary of State shall be an agent of a limited liability company including a dissolved limited liability company upon whom any such process, notice or demand may be served whenever the limited liability company fails to appoint or maintain a registered agent in this state or whenever the limited liability company's registered agent cannot with reasonable diligence be found at the registered office.

(3) Service shall be made on the Secretary of State by:

(a) Serving on the Secretary of State or a clerk on duty at the office a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, and the required fee for each party being served or by mailing to the office a copy of the process, notice or demand and the required fee for each party being served by certified or registered mail.

(b) Transmittal by the person instituting the proceedings of notice of the service on the Secretary of State and copy of the process, notice or demand and accompanying papers to the limited liability company being served by certified or registered mail:

(A) At the last registered office of the limited liability company as shown by the records on file in the office of the Secretary of State; and

(B) At such address of the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

(c) Filing with the appropriate court or other body, as part of the return of service,

the return receipt of mailing and an affidavit of the person initiating the proceedings stating that this section has been complied with.

(4) The Secretary of State shall keep a record of all processes, notices and demands served upon the Secretary of State under this section.

(5) After completion of initial service upon the Secretary of State, no additional documents need be served upon the Secretary of State to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law, or enlarge the purposes for which service on the Secretary of State is permitted where such purposes are limited by other provisions of law. [1993 c.173 §27]

MANAGEMENT AND MANAGEMENT RIGHTS OF MEMBERS

63.130 Management by members. Unless the articles of organization provide for a manager or managers, the business and affairs of a limited liability company shall be managed by its members, subject to any provisions of the articles of organization or any operating agreement restricting or enlarging the management rights and duties of any member, manager, or group or class of members or managers. Unless management is vested in a manager or managers:

(1) The members shall be deemed to be managers for purposes of applying any provision of this chapter unless the context clearly requires otherwise; and

(2) The members shall have and be subject to all duties and liabilities of managers as set forth in this chapter. [1993 c.173 §28]

63.135 Managers. (1) The articles of organization may provide that the business and affairs of a limited liability company shall be managed by or under the authority of one or more managers who need not be members of the limited liability company.

(2) The articles of organization or any operating agreement may prescribe the qualifications relating to managers.

(3) The number of managers, if any, and their respective terms shall be specified in or fixed in accordance with the articles of organization or any operating agreement. [1993 c.173 §29]

63.140 Agency power of managers and members. (1) Every manager is an agent of the limited liability company for the purpose

of its business or affairs. The act of every manager, including the execution on behalf of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(2) If articles of organization provide for managers, members who are not managers shall not have the authority to bind the limited liability company merely as a result of their status as members. [1993 c.173 §30]

63.145 Election and removal of managers. Except as otherwise provided in the articles of organization or any operating agreement:

(1) Election of a manager or managers to fill initial positions or vacancies shall be by majority vote of the members as provided in ORS 63.150.

(2) Any manager or managers may be removed, with or without cause, by majority vote of the members as provided in 63.150. [1993 c.173 §31]

63.150 Voting. (1) Except as otherwise provided in the articles of organization or any operating agreement, if a limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers and each manager shall have one vote.

(2) Except as otherwise provided in the articles of organization or any operating agreement, each member of a limited liability company shall have one vote. If the members of the limited liability company are deemed to be managers pursuant to ORS 63.130 (1), all decisions of the members, including decisions in their capacity as managers, shall be made as provided in this section.

(3) Unless otherwise provided in this chapter, the articles of organization or any operating agreement, a majority vote of the members shall be required to approve the following matters:

(a) The sale, lease, exchange, mortgage, pledge or other transfer or disposition of all or substantially all the assets of the limited liability company;

(b) The merger of the limited liability company with another entity;

(c) An amendment to the articles of organization or any operating agreement;

(d) The incurrence of indebtedness by the limited liability company other than in the ordinary course of business;

(e) A transaction involving an actual or potential conflict of interest between a member or manager and the limited liability company; or

(f) A change in the nature of the business of the limited liability company.

(4) The articles of organization or any operating agreement may provide for other voting rights for members or managers.

(5) Unless the articles of organization or any operating agreement provide otherwise, action requiring a vote of managers or members may be taken at a meeting, which may include a telephonic meeting, or without a meeting. Action taken without a meeting may be effected by the written consent of all the managers or members or, if the articles of organization or any operating agreement so provide, by the written consent of the proportion of managers or members specified in the articles of organization or any operating agreement. [1993 c.173 §32]

63.155 Duties and standard of conduct.

(1) A manager shall discharge the duties of a manager, including the duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

(2) In discharging the duties of a manager, a manager is entitled to rely on information, opinions, reports or statements, including financial statements or other financial data, if prepared or presented by:

(a) One or more employees or other agents of the limited liability company whom the manager reasonably believes to be reliable and competent in the matter or matters presented;

(b) Legal counsel, public accountants or other persons as to matters which the manager reasonably believes are within such person's professional or expert competence; or

(c) A committee of managers upon which the manager does not serve, if the manager reasonably believes the committee merits confidence.

(3) A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

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

(5) Except as otherwise provided in the articles of organization or any operating agreement, every manager and member must account to the limited liability company for and hold as trustee for it any benefit or any profits derived by the manager or member from any transaction connected with the formation, conduct or winding up of the limited liability company or from any use by the manager or member of its property unless such benefit or profit expressly is approved or ratified by a majority vote of the members as provided in ORS 63.150. [1993 c.173 §33]

63.160 Limitation of liability and indemnification. (1) The articles of organization or any operating agreement may eliminate or limit the personal liability of a manager to the limited liability company or its members for monetary damages for conduct as a manager to the same extent as permitted in ORS 60.387 to 60.414, and in addition, may provide for indemnification of any member who is not a manager to the same extent indemnification is permitted in ORS 60.387 to 60.414 for an officer who is not a director. However, no such provision shall eliminate or limit the liability of a manager for any act of omission occurring prior to the date when such provision became effective and no such provision shall eliminate or limit the liability of a manager for:

(a) Any breach of a manager's duty of loyalty to the limited liability company or its members;

(b) Acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;

(c) Any unlawful distribution under ORS 63.235; or

(d) Any transaction from which the manager derives an improper personal benefit.

(2) For purposes of this section's application of provisions in ORS chapter 60 to limited liability companies:

(a) "Articles of incorporation" means articles of organization.

(b) "Bylaws" means any operating agreement.

(c) "Corporation" means any limited liability company.

(d) "Director" means any manager and "board of directors" means the managers.

(e) "Shareholder" means any member.

(f) References to ORS 60.047 (2)(d) refer to subsection (1) of this section. [1993 c.173 §34]

63.165 Liability of members and managers. A member or manager of the limited liability company is not personally liable for any debt, obligation or liability of the limited

liability company merely by reason of being a member or manager or both. [1993 c.173 §35]

FINANCES

63.175 Contributions. The contributions of a member to the limited liability company may consist of cash, property, services rendered, a promissory note or other obligation to contribute cash or property or to perform services. [1993 c.173 §36]

63.180 Liability for contributions. (1) A promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing and signed by the member.

(2) Except as provided in the articles of organization or any operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.

(3) If a member does not make a required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to the portion of the value of the contribution, as stated in the limited liability company records required to be kept pursuant to ORS 63.771, that has not been made.

(4) Unless otherwise provided in the articles of organization or any operating agreement, the obligation of a member to make a contribution may be compromised only by consent of all members. Notwithstanding the compromise, a creditor of the limited liability company may enforce the original obligation if the creditor acted in reliance on that obligation before the amendment or cancellation of the obligation to reflect the compromise. [1993 c.173 §37]

63.185 Allocation of profits and losses.

(1) The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the articles of organization or any operating agreement.

(2) If neither the articles of organization nor any operating agreement provides for an allocation of profits and losses, then profits and losses shall be allocated among all the members equally.

(3) If profits, but not losses, are allocated in the articles of organization or any operating agreement, then losses shall be deemed allocated in the same proportion as profits. If losses, but not profits, are allocated in the articles of organization or any operating agreement, then profits shall be deemed allocated in the same proportion as losses.

(4) Except as otherwise expressly provided in the articles of organization or any operating agreement, if after formation of the limited liability company an additional member is admitted to the limited liability company, then the profits and losses of the limited liability company shall be allocated among the members as follows:

(a) Profits and losses that would have been realized on the date of admission of the additional member if all the assets of the limited liability company were then sold at their fair value shall be allocated among only the members of the limited liability company who are members immediately prior to the new member's admission based on the respective shares of profits and losses of such preexisting members before such admission. Thereafter the amount of profits or losses so allocated shall be treated as an adjustment to the contributions made by the preexisting members to the limited liability company; except that if the provisions of this subsection have been applied previously by the limited liability company in connection with the admission of a new member, the profits and losses allocated pursuant to this subsection shall be only those profits and losses realized since the most recent admittance of a new member; and

(b) Profits and losses realized by the limited liability company subsequent to the date of admission of the additional member shall be allocated among all the members, including the additional member, based on the respective shares of profits and losses of all the members after such admission. [1993 c.173 §38]

DISTRIBUTIONS AND WITHDRAWAL

63.195 Allocation of interim distributions. Distributions of cash or other assets of a limited liability company before the dissolution and winding up of the limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the articles of organization or any operating agreement. If neither the articles of organization nor any operating agreement provides for such allocations, such distributions shall be allocated among the members in proportion to their right to share in the profits of the limited liability company. [1993 c.173 §39]

63.200 Right to interim distributions. Except as provided in ORS 63.205 to 63.235, a member is entitled to receive distributions from a limited liability company before the member's withdrawal from the limited liability company and before the dissolution and winding up of the limited liability company to the extent and at the times or upon the occurrence of the events specified in the ar-

articles of organization or any operating agreement. [1993 c.173 §40]

63.205 Voluntary withdrawal of member. (1) A member may voluntarily withdraw from a limited liability company:

(a) At the time or upon the occurrence of events specified in the articles of organization or any operating agreement; and

(b) Unless the articles of organization or any operating agreement expressly provide in writing that a member has no power to withdraw voluntarily from the limited liability company or otherwise expressly limit or condition such power, upon not less than six months' prior written notice to the limited liability company at its principal office.

(2) If a member exercises the power to withdraw voluntarily, but the withdrawal is in breach of any provision of the articles of organization or any operating agreement, then, unless otherwise provided in writing in the articles of organization or any operating agreement, the limited liability company, in addition to any other remedy available at law or in equity, may recover from the withdrawing member damages for such breach and may offset such damages against any amounts otherwise distributable or payable to the withdrawing member. Such damages may include, without limitation, the reasonable cost of obtaining replacement of any services the withdrawing member was obligated to perform for or on behalf of the limited liability company.

(3) Unless otherwise provided in writing in the articles of organization or any operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a voluntary withdrawal by a member before the expiration of that term or completion of that undertaking is a breach of the applicable articles of organization or operating agreement. [1993 c.173 §41]

63.209 Expulsion of member. (1) A member may be expelled from a limited liability company:

(a) In accordance with a written provision in the articles of organization or any operating agreement; or

(b) Except as otherwise provided in writing in the articles of organization or any operating agreement, by a court, upon application of any member, if the court determines that:

(A) The member has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the limited liability company; or

(B) The member has willfully or persistently committed a material breach of

the articles of organization or any operating agreement or otherwise breached a duty owed to the limited liability company or the other members to the extent that it is not reasonably practicable to carry on the business or affairs of the limited liability company with that member.

(2) For purposes of ORS 63.205 and 63.215 unless otherwise provided in the articles of organization or any operating agreement, an expelled member shall be treated as having withdrawn voluntarily from the limited liability company in breach of the articles of organization and any operating agreement.

(3) The power of a limited liability company to expel a member pursuant to this section does not limit any right or power of the limited liability company to seek any other remedies provided for in the articles of organization or any operating agreement or by applicable law. [1993 c.173 §42]

63.210 [1959 c.660 §1; repealed by 1981 c.68 §1]

63.215 Distribution upon withdrawal.

(1) Except as otherwise provided in this chapter, any withdrawing member is entitled to receive:

(a) Any distribution to which the withdrawing member is entitled under the articles of organization or any operating agreement; and

(b) Unless otherwise provided in the articles of organization or any operating agreement, the fair value of the withdrawing member's interest in the limited liability company as of the date of withdrawal based upon the withdrawing member's right to receive distributions from the limited liability company pursuant to ORS 63.625 as if there had been a dissolution, winding up and termination of the limited liability company as of the date of withdrawal.

(2) Any distribution pursuant to this section shall be made at the time or times specified in the articles of organization or any operating agreement or, if no such time is specified, within a reasonable time after withdrawal.

(3) For purposes of this section, the fair value of the withdrawing member's interest in the limited liability company shall be determined by assuming that any distribution to which the withdrawing member is otherwise entitled by reason of this section has been made. [1993 c.173 §43]

63.219 Distribution in kind. Except as provided in the articles of organization or any operating agreement:

(1) No member, regardless of the nature of the member's contribution, has any right to demand and receive any distribution from

a limited liability company in any form other than cash; and

(2) No member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in operating or liquidating distributions, as the case may be, from the limited liability company. [1993 c.173 §44]

63.220 [1959 c.660 §2; repealed by 1981 c.68 §1]

63.225 Right to distribution. When a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution. [1993 c.173 §45]

63.229 Limitations on distribution. (1) A distribution may be made by a limited liability company to any member only if, after giving effect to the distribution, in the judgment of the managers:

(a) The limited liability company would be able to pay its debts as they become due in the ordinary course of business; and

(b) The fair value of the total assets of the limited liability company would at least equal the sum of:

(A) Its total liabilities; plus

(B) Unless the articles of organization permit otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution, if any, of other members that are superior to the rights of the members receiving the distribution.

(2) The managers of a limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) A fair valuation or other method that is reasonable in the circumstances.

(3) For purposes of this section, the amount, if any, by which a liability as to which the recourse of creditors is limited to specific property of the limited liability company exceeds the fair value of such specific property shall be disregarded as a liability of the limited liability company.

(4) The effect of a distribution under subsection (1) of this section is measured for purposes of this section:

(a) In the case of distribution by purchase, retirement or other acquisition of all or a portion of a member's interest in the

limited liability company, as of the earlier of the date the money or other property is transferred or debt incurred by the limited liability company or the date the member ceases to be a member with respect to the membership interest purchased, retired or otherwise acquired;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of the date a distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

(5) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, unless the member agrees to subordination or the limited liability company grants the member a security interest or other lien against limited liability company assets to secure the indebtedness. [1993 c.173 §46]

63.230 [1959 c.660 §3; repealed by 1981 c.68 §1]

63.235 Liability for wrongful distribution. (1) A manager who votes for or assents to a distribution in violation of this chapter, the articles of organization or any operating agreement is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating this chapter, the articles of organization or any operating agreement, if it is established that such manager did not act in compliance with ORS 63.155.

(2) Each member or manager held liable under this section for an unlawful distribution is entitled to contribution:

(a) From each other member or manager who could be held liable under this section for the unlawful distribution; and

(b) From each member for the amount the member received knowing that the distribution was made in violation of this chapter, the articles of organization or any operating agreement.

(3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution is measured. [1993 c.173 §47]

ASSIGNMENT OF MEMBER'S INTEREST

63.239 Nature of membership interest. A membership interest is personal property. A member is not a coowner of and has no

interest in specific limited liability company property. [1993 c.173 §48]

63.240 [1959 c.660 §4; repealed by 1981 c.68 §1]

63.245 Admission of members. (1) A person becomes a member of a limited liability company on the later of:

(a) The date the initial articles of organization are filed; or

(b) The date stated in the records of the limited liability company as the date the person becomes a member.

(2) After the filing of the limited liability company's initial articles of organization, a person may be admitted as an additional member of the limited liability company upon compliance with the articles of organization or any operating agreement, or, if neither the articles of organization nor any operating agreement so provide:

(a) In the case of a person acquiring a membership interest directly from the limited liability company, upon the written consent of all members; or

(b) In the case of an assignee of a limited liability company membership interest, upon the written consent of all members other than the assignor. [1993 c.173 §49]

63.249 Assignment of membership interest; effective date of assignment. Except as provided in the articles of organization or any operating agreement:

(1) A membership interest is assignable in whole or in part.

(2) An assignment of a membership interest does not itself dissolve the limited liability company or entitle the assignee to become or to exercise any rights of a member, including without limitation the right to participate in the management and affairs of the limited liability company.

(3) An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled.

(4) Until the assignee of a membership interest becomes a member:

(a) The assignor continues to be a member and to have the power to exercise any rights of a member; and

(b) The assignee has no liability as a member solely as a result of the assignment.

(5) The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(6) Any otherwise permissible assignment of a membership interest shall be effective as to and binding on the limited liability company only after reasonable notice of and proof of the assignment have been provided

to the managers of the limited liability company.

(7) The pledge of, or granting of a security interest, lien, or other encumbrance in or against all or any portion of the membership interest of a member is not an assignment of the member's interest. [1993 c.173 §50]

63.250 [1959 c.660 §5; repealed by 1981 c.68 §1]

63.255 Right of assignee of membership interest to become a member. (1) Except as otherwise provided in the articles of organization or any operating agreement, an assignee of a member's interest may become a member only if all other members unanimously consent.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under this chapter, the articles of organization and any operating agreement. An assignee who becomes a member also is liable for any obligations of the assignee's assignor to make contributions under ORS 63.180. However, the assignee is not obligated for liabilities reasonably unknown to the assignee at the time the assignee became a member.

(3) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company under ORS 63.180.

(4) Except as otherwise provided in the articles of organization or any operating agreement, a member who assigns the member's membership interest in the limited liability company ceases to be a member only when any assignee of the member's interest becomes a member with respect to the assigned interest. [1993 c.173 §51]

63.259 Rights of a judgment creditor against a member. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This chapter shall not deprive any member of the benefit of any exemption laws applicable to the member's membership interest. [1993 c.173 §52]

63.260 [1959 c.660 §6; repealed by 1981 c.68 §1]

63.265 Deceased or incompetent members who are individuals; dissolved and terminated members who are legal entities. (1) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the

member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property.

(2) If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor. [1993 c.173 §53]

63.270 [1959 c.660 §8; repealed by 1981 c.68 §1]

63.280 [1959 c.660 §7; 1967 c.359 §675; repealed by 1981 c.68 §1]

63.290 [1959 c.660 §9; repealed by 1981 c.68 §1]

63.300 [1959 c.660 §10; repealed by 1981 c.68 §1]

63.310 [1959 c.660 §11; repealed by 1981 c.68 §1]

63.320 [1959 c.660 §12; repealed by 1981 c.68 §1]

63.330 [1959 c.660 §13; repealed by 1981 c.68 §1]

63.340 [1959 c.660 §15; repealed by 1981 c.68 §1]

63.350 [1959 c.660 §16; repealed by 1981 c.68 §1]

AMENDMENT OF ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT

63.431 Operating agreement. (1) An operating agreement of a limited liability company 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.

(2) The power to adopt, alter, amend or repeal an operating agreement of a limited liability company shall be vested in the members of the limited liability company unless otherwise vested in a manager or managers of the limited liability company by the articles of organization or any operating agreement.

(3) The members may amend or repeal any operating agreement even if the articles of organization or any operating agreement provide that a manager or managers may amend or repeal an operating agreement. [1993 c.173 §70]

63.434 Amendment to articles of organization. (1) Consistent with the provisions of this chapter, a limited liability company may amend its articles of organization at any time to add, change or delete any provision, provided that the articles of organization as amended contain only such provisions as are required or permitted in initial articles of organization under this chapter as of the effective date of the amendment.

(2) A limited liability company amending its articles of organization shall deliver articles of amendment to the office for filing.

(3) Articles of amendment shall contain:

(a) The name of the limited liability company;

(b) The text of each amendment adopted;

(c) The date of each amendment's adoption;

(d) If an amendment was adopted by the managers without member action, a statement to that effect and a statement that member action was not required; and

(e) If an amendment was approved by the members, a statement that the member approval required under ORS 63.444, the articles of organization or any operating agreement has been obtained and a statement of the percentage of such members' approval. [1993 c.173 §71]

63.437 Restated articles of organization. (1) The managers of a limited liability company may restate its articles of organization at any time with or without member action.

(2) The restatement may include one or more amendments to the articles of organization. If the restatement includes an amendment requiring member approval, it must be adopted as provided in ORS 63.444.

(3) A limited liability company restating its articles of organization shall deliver to the office for filing articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles of organization requiring member approval and, if it does not, that the managers adopted the restatement; or

(b) If the restatement contains an amendment to the articles of organization requiring member approval, the information required by ORS 63.434.

(4) Restated articles of organization shall contain all statements required to be included in the initial articles of organization except that no statement is required to be made with respect to:

(a) The names and addresses of the organizers or the initial or present registered office or agent; or

(b) The mailing address of the limited liability company if an annual report has been filed with the office of the Secretary of State.

(5) Duly adopted restated articles of organization supersede the initial articles of organization and all amendments to them. [1993 c.173 §72]

63.441 Amendment by managers. Except as provided in the articles of organization, the manager or managers of a limited

liability company may adopt without member action one or more amendments to the articles of organization to:

(1) Delete the names and addresses of the initial managers, if named in the initial articles of organization;

(2) Delete the name and address of the initial registered agent or registered office, if a statement of change is filed with the office of the Secretary of State;

(3) Delete the mailing address of the limited liability company if a report reflecting the mailing address has been filed with the office of the Secretary of State;

(4) Change the limited liability company's name by substituting "limited liability company" for the abbreviation "L.L.C.," or vice versa; or

(5) Make any other changes expressly permitted by this chapter to be made without member action. [1993 c.173 §73]

63.444 Amendment by members. Except as otherwise provided in ORS 63.441 or in the articles of organization, all amendments to the articles of organization must be approved by the members. Unless otherwise provided in the articles of organization or any operating agreement, the managers, if any, of the limited liability company may, but need not, propose or take a position recommending or disapproving any such proposed amendment. Unless this chapter, the articles of organization or any operating agreement requires a greater vote, the amendment to be adopted must be approved by a majority vote of the members as provided in ORS 63.150. [1993 c.173 §74]

MERGER

63.481 Merger. (1) One or more limited liability companies may merge into another limited liability company if each limited liability company that is a party to the merger approves a plan of merger.

(2) The plan of merger must set forth:

(a) The name of each limited liability company planning to merge and the name of the surviving limited liability company into which each other limited liability company plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the membership interests of each limited liability company into membership interests or obligations of the surviving or any other limited liability company, or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of organization of the surviving limited liability company; and

(b) Other provisions relating to the merger. [1993 c.173 §90]

63.487 Action on plan. (1) Unless the articles of organization or any operating agreement requires a greater vote, a plan of merger shall be approved by a limited liability company by a majority vote of its members.

(2) After a merger is authorized, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further member action, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the managers. [1993 c.173 §91]

63.494 Articles of merger. (1) After a plan of merger is approved by each limited liability company that is a party to the merger, the surviving limited liability company shall deliver to the office for filing articles of merger setting forth:

(a) The plan of merger; and

(b) A statement that the plan of merger was duly authorized and approved in accordance with ORS 63.481 and 63.487.

(2) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed. [1993 c.173 §92]

63.497 Effect of merger. When a merger takes effect:

(1) Every other limited liability company party to the merger merges into the surviving limited liability company and the separate existence of every limited liability company except the surviving company ceases;

(2) The title to all real estate and other property owned by each limited liability company party to the merger is vested in the surviving limited liability company without reversion or impairment;

(3) The surviving limited liability company has all liabilities of each limited liability company party to the merger;

(4) A proceeding pending against any limited liability company party to the merger may be continued as if the merger did not occur or the surviving limited liability company may be substituted in the proceeding for the limited liability company whose existence ceased;

(5) The articles of organization of the surviving limited liability company are amended to the extent provided in the plan of merger; and

(6) The membership interests of each limited liability company party to the merger that are to be converted into membership interests or obligations of the surviving or any other limited liability company or into cash or other property are converted and the former holders of the membership interests are entitled only to the rights provided in the articles of merger. [1993 c.173 §93]

63.501 Merger with foreign limited liability company. (1) One or more foreign limited liability companies may merge with one or more domestic limited liability companies if:

(a) Each surviving foreign limited liability company which is transacting business in this state following the merger complies with the requirements of ORS 63.714 (3) and, if applicable, ORS 63.707;

(b) The merger is permitted by the law of the state or country under whose law each foreign limited liability company is formed and each foreign limited liability company complied with that law in effecting the merger;

(c) The foreign limited liability company complies with ORS 63.494; and

(d) Each domestic limited liability company complies with the applicable provisions of ORS 63.481 and 63.487 and, if it is the surviving limited liability company of the merger, with ORS 63.481 to 63.494.

(2) Upon the merger taking effect, a surviving foreign limited liability company of a merger is deemed to appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation of each domestic limited liability company party to the merger. [1993 c.173 §94]

DISSOLUTION

(In General)

63.621 Dissolution. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) Upon reaching the time for dissolution, if any, specified or deemed specified in the articles of organization.

(2) Upon the occurrence of events specified in writing in the articles of organization or any operating agreement.

(3) By the vote or such other action of the members as provided in writing in the articles of organization or any operating agreement or, if neither the articles of organization nor any operating agreement so provides in writing, by the written consent of all the members.

(4) Except as otherwise provided in writing in the articles of organization or any operating agreement, upon the death, incompetence, withdrawal, expulsion, bankruptcy or dissolution of a member, or the occurrence of any other event which terminates the continued membership of a member in the limited liability company. However, if there are at least two remaining members and if the articles of organization or any operating agreement so provide in writing, the business or affairs of the limited liability company may be continued by the consent, obtained within 120 days of the dissolution event, of such percentage or number of the remaining members as is specified in the articles of organization or any operating agreement. For purposes of this subsection, except as otherwise provided in the articles of organization or any operating agreement, the admission as a member of an assignee of a membership interest pursuant to ORS 63.255 shall constitute the requisite consent of the remaining members to continue the business of the limited liability company notwithstanding the termination of the membership of the assignor of the partnership interest pursuant to ORS 63.255 (4).

(5) Upon administrative dissolution by the Secretary of State under ORS 63.651.

(6) Upon entry of a decree of judicial dissolution under ORS 63.671. [1993 c.173 §54]

63.625 Distribution of assets upon dissolution. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To the extent permitted by law, to creditors, including members who are creditors, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under ORS 63.200 or 63.215;

(2) Except as provided in the articles of organization or any operating agreement, to members and former members of the limited liability company in satisfaction of the limited liability company's obligations for distributions due and owing under ORS 63.200 or 63.215; and

(3) Except as provided in the articles of organization or any operating agreement, to members of the limited liability company first for the return of their previously unreturned contributions and thereafter in the proportions in which the members share in profits. [1993 c.173 §59]

63.629 Agency power of managers after dissolution. (1) Except as provided in subsections (2) and (3) of this section, and except as otherwise provided in the articles of organization or any operating agreement, after dissolution of the limited liability com-

pany and until such time, if any, as the limited liability company is continued in accordance with ORS 63.621 (4), each manager can bind the limited liability company:

(a) By any act or omission appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have actual notice of the dissolution.

(2) An act or omission of a manager which would not be binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized or ratified by the limited liability company.

(3) An act or omission of a manager that would be binding on the limited liability company under subsection (1) of this section or which otherwise would be authorized, but which is in contravention of a restriction on the authority of the manager shall not bind the limited liability company to persons having knowledge of the restriction. [1993 c.173 §61]

63.631 Articles of dissolution. At any time following dissolution of the limited liability company, or in the case of a dissolution pursuant to ORS 63.621 (4), at any time after expiration of the 120-day period described therein, the limited liability company may deliver to the office articles of dissolution setting forth:

(1) The name of the corporation; and

(2) The date the dissolution occurred. [1993 c.173 §60]

63.637 Effect of dissolution; winding up. (1) A dissolved limited liability company that does not continue as provided in ORS 63.621 (4), continues its existence but may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs, including the actions specified in ORS 60.637 for a dissolved corporation.

(2) Dissolution of a limited liability company does not:

(a) Transfer title to the limited liability company's property;

(b) Subject its members, managers or employees to standards of conduct different from those prescribed in this chapter;

(c) Prevent commencement of a proceeding by or against the limited liability company in its limited liability company name;

(d) Abate or suspend a proceeding by or against the limited liability company on the effective date of the dissolution; or

(e) Terminate the authority of the registered agent of the limited liability company.

(3) Except as otherwise provided in the articles of organization or any operating agreement, the manager or managers or, if the articles of organization do not provide for managers, the members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs. However, the circuit court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or the member's legal representative or assignee. [1993 c.173 §55]

63.641 Known claims against dissolved limited liability company. (1) A dissolved limited liability company may dispose of the known claims against it by the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the dissolution. The written notice must:

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

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) If a claimant who is given written notice under subsection (2) of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [1993 c.173 §56]

63.644 Unknown claims against dissolved limited liability company. (1) A dissolved limited liability company which has filed articles of dissolution in accordance with ORS 63.631 may also publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office is located or, if the principal office is not in this state, where its registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under ORS 63.641;

(b) A claimant whose claim was sent in a timely manner to the dissolved limited liability company but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution. [1993 c.173 §57]

63.645 Enforcement of claims against dissolved limited liability company. A claim against a dissolved limited liability company that is not barred under ORS 63.641 or 63.644 may be enforced:

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

(2) If the assets have been distributed in liquidation, against each member of the dissolved limited liability company for the amount by which such member's liquidation distributions would have been reduced if the claim had been paid by the limited liability company. A member's total liability for all claims under this section may not exceed the total value of assets distributed to the member, as of the date or dates of distribution, less any liability of the limited liability company paid on behalf of the limited liability company by that member after the date of the distribution. [1993 c.173 §58]

(Administrative Dissolution)

63.647 Grounds for administrative dissolution. The Secretary of State may commence a proceeding under ORS 63.651 to administratively dissolve a limited liability company if:

(1) The limited liability company does not pay when due any fees imposed by this chapter;

(2) The limited liability company does not deliver its annual report to the Secretary of State when due;

(3) The limited liability company is without a registered agent or registered office in this state;

(4) The limited liability company does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

(5) The limited liability company's period of duration stated in its articles of organization expires. [1993 c.173 §62]

63.651 Procedure; effect of administrative dissolution. (1) If the Secretary of State determines that one or more grounds exist under ORS 63.647 for dissolving a limited liability company, the Secretary of State shall give the limited liability company written notice of the determination.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State, within 45 days after notice is given, that each ground determined by the Secretary of State does not exist, the Secretary of State shall dissolve the limited liability company.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 63.637 and notify claimants under ORS 63.641 and 63.644.

(4) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent. [1993 c.173 §§63,106]

63.654 Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved under ORS 63.651 may apply to the Secretary of State for reinstatement. The application shall:

(a) State the name of the limited liability company and the effective date of its administrative dissolution; and

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the limited liability company's name satisfies the requirements of ORS 63.094, the Secretary of State shall reinstate the limited liability company.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred. [1993 c.173 §64]

63.657 Appeal from denial of reinstatement. (1) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall give written notice to the limited liability company that explains the reason or reasons for denial.

(2) The limited liability company may appeal the denial of the reinstatement pursuant to the provisions of ORS 183.310 to 183.550. [1993 c.173 §65]

(Judicial Dissolution)

63.661 Grounds for judicial dissolution. The circuit courts may dissolve a limited liability company:

(1) In a proceeding by the Attorney General if it is established that:

(a) The limited liability company obtained its articles of organization through fraud; or

(b) The limited liability company has continued to exceed or abuse the authority conferred upon it by law.

(2) In a proceeding by or for a member if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformance with its articles of organization or any operating agreement.

(3) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision. [1993 c.173 §66]

63.664 Procedure for judicial dissolution. (1) Venue for a proceeding by the Attorney General to dissolve a limited liability company lies in Marion County. Venue for a proceeding brought by any other party named in ORS 63.661 lies in the county where a limited liability company's principal office is located or, if the principal office is

not in this state, where its registered office is or was last located.

(2) It is not necessary to make members parties to a proceeding to dissolve a limited liability company unless relief is sought against them individually.

(3) A court in a proceeding brought to judicially dissolve a limited liability company may issue injunctions, appoint a receiver or a custodian with all powers and duties the court directs, and take other action required to preserve or liquidate the limited liability company's assets wherever located or carry on the business of the limited liability company. [1993 c.173 §67]

63.671 Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in ORS 63.661 exist, it may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the office for filing. The Secretary of State shall file the certified copy of the decree.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's business and affairs in accordance with ORS 63.637, the notification of claimants and enforcement of claims in accordance with ORS 63.641 and 63.644, and the distribution of limited liability company assets in accordance with ORS 63.625. [1993 c.173 §68]

(Disposition of Assets)

63.674 Deposit with Division of State Lands. Assets of a dissolved limited liability company that should be distributed to a creditor, claimant or member of the limited liability company who cannot be found or who is not competent to receive them shall be reduced to cash and, within six months after the final distribution of such liquidation or winding up is payable, deposited with the Division of State Lands. The receiver or other liquidating agent shall prepare in duplicate and under oath a statement containing the names and last-known addresses of the persons entitled to such funds. One of the statements shall be filed with the Division of State Lands and another shall be delivered to the office for filing. The funds shall then escheat to and become the property of the State of Oregon and shall become a part of the Common School Fund of the state. The owners, heirs or personal representatives of the owner may reclaim any funds so deposited in the manner provided for estates which have escheated to the state. [1993 c.173 §69]

FOREIGN LIMITED LIABILITY COMPANIES

(Authority to Transact Business)

63.701 Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it has been authorized to do so by the Secretary of State.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending or settling any proceeding.

(b) Holding meetings of the managers or members or carrying on other activities concerning internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning, without more, real or personal property.

(j) Conducting an isolated transaction that is completed within 30 days and is not one in the course of repeated transactions of a like nature.

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) of this section is not exhaustive. [1993 c.173 §75]

63.704 Consequences of transacting business without authority. (1) A foreign limited liability company transacting business in this state without authorization from the Secretary of State may not maintain a proceeding in any court in this state until it obtains authorization from the Secretary of State to transact business in this state.

(2) The successor to a foreign limited liability company that transacted business in this state without authority to transact busi-

ness in this state and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains authorization from the Secretary of State to transact business in this state.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign limited liability company or its successor requires authorization from the Secretary of State to transact business in this state. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the authorization.

(4) A foreign limited liability company that transacts business in this state without authority shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees that would have been imposed by this chapter upon the foreign limited liability company had it duly applied for and received authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign limited liability company to obtain authority to transact business in this state does not impair the validity of its acts or prevent it from defending any proceeding in this state.

(6) A member of a foreign limited liability company is not liable for the debts and obligations of the foreign limited liability company solely by reason of the foreign limited liability company's having transacted business in this state without authority. [1993 c.173 §76]

63.707 Application for authority to transact business. (1) A foreign limited liability company may apply for authority to transact business in this state by delivering an application to the office for filing. The application shall set forth:

(a) The name of the foreign limited liability company or, if its name is unavailable for filing in this state, another name that satisfies the requirements of ORS 63.717;

(b) The name of the state or country under whose law it is organized;

(c) Its date of organization and either the date on which the period of its duration expires or a statement that its duration is perpetual;

(d) The address, including street and number, and mailing address, if different, of its principal office;

(e) The address, including street and number, of its registered office in this state and the name of its registered agent at that office; and

(f) A statement that the foreign limited liability company satisfies the requirements of ORS 63.714 (3).

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, current within 60 days of delivery and authenticated by the official having custody of limited liability company records in the state or country under whose law it is organized. [1993 c.173 §77]

63.711 Amendment to application for authority. (1) A foreign limited liability company authorized to transact business in this state shall deliver an amendment to the application for authority to transact business in this state to the office for filing if it changes:

(a) Its name as shown on the records of the office; or

(b) The period of its duration.

(2) The amendment to the application for authority to transact business in this state shall set forth its name shown on the records of the office and the new name or the new period of duration. The name as changed must satisfy the requirements of ORS 63.094. [1993 c.173 §78]

63.714 Effect of authority. (1) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its members.

(2) Except as provided in subsection (3) of this section, a foreign limited liability company may not be denied registration by reason of any difference between the laws of this state and the laws of the state or other jurisdiction under which the foreign limited liability company is organized.

(3) Notwithstanding subsections (1) and (2) of this section, no foreign limited liability company shall be authorized or permitted to exercise any powers or purposes or conduct any business or affairs in this state that a domestic limited liability company is proscribed from exercising, pursuing or undertaking in this state, and no foreign limited liability company shall be authorized to transact business in this state if such foreign limited liability company is constituted with fewer than two members. [1993 c.173 §79]

63.717 Name of foreign limited liability company. (1) Except as provided in subsections (2) and (3) of this section, the Secretary of State shall not authorize a foreign limited liability company to transact business in this state if the name of the foreign limited liability company does not conform to ORS 63.094.

(2) The name of the foreign limited liability company must contain a word or abbreviation required by ORS 63.094 unless the name contains some other word, phrase or abbreviation that the laws of the place of organization require to denote a limited liability company.

(3) If a limited liability company name, corporate name, professional corporate name, nonprofit corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered name or assumed business name of active record with the office is not distinguishable on the records of the office from the name of the applicant foreign limited liability company, the Secretary of State shall not authorize the applicant to transact business in this state unless the foreign limited liability company states its name on the application for authority to transact business in this state under ORS 63.707 as (name under which organized), a limited liability company of (place of organization), the entirety of which shall be the real and true name of the foreign limited liability company in this state under ORS chapter 648.

(4) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not satisfy the requirements of this section, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of this section and ORS 63.711. [1993 c.173 §80]

63.721 Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as any of its places of business; and

(2) A registered agent who may be:

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

(b) A domestic limited liability company, a domestic business corporation or a domestic nonprofit corporation whose business office is identical to the registered office; or

(c) A foreign limited liability company, a foreign business corporation or a foreign

nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office. [1993 c.173 §81]

63.724 Change of registered office or registered agent of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a statement of change that sets forth:

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

(b) If the registered office is to be changed, the street address, including street and number, of the new registered office;

(c) If the registered agent is to be changed, the name of the new registered agent and a statement that the new agent has consented to the appointment; and

(d) That after the change or changes are made, the street addresses of the registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent shall change the street address of the registered office of the foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the office of the Secretary of State a statement of change that complies with the requirement of subsection (1) of this section and states that the foreign limited liability company has been notified of the change.

(3) The filing of the statement by the Secretary of State shall terminate the existing registered office or agent, or both, on the effective date of the filing and establish the newly appointed registered office or agent, or both, as that of the foreign limited liability company. [1993 c.173 §82]

63.727 Resignation of registered agent of a foreign limited liability company. (1) The registered agent of a foreign limited liability company may resign as agent upon delivering a signed statement to the office and giving notice in the form of a copy of the statement to the foreign limited liability company. The statement of resignation may include a statement that the registered office is also discontinued.

(2) Upon the delivery of the signed statement, the Secretary of State shall file the resignation statement. The copy of the statement given to the foreign limited liability company under subsection (1) of this section

shall be addressed to the foreign limited liability company at its mailing address or its principal office as shown by the records of the Secretary of State.

(3) The agency appointment is terminated, and the registered office discontinued if so provided in the signed statement under subsection (1) of this section, on the 31st day after the date on which the statement was filed by the Secretary of State unless the foreign limited liability company has previously appointed a successor registered agent, as provided in section 82 of this Act, thereby terminating the capacity of such agent. [1993 c.173 §§83,107]

63.731 Service on a foreign limited liability company. (1) The registered agent appointed by a foreign limited liability company authorized to transact business in this state shall be its agent upon whom any process, notice or demand required or permitted by law to be served upon the foreign limited liability company may be served.

(2) The Secretary of State shall be an agent of a foreign limited liability company upon whom any process, notice or demand may be served, if:

(a) The foreign limited liability company is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;

(b) The foreign limited liability company's authority to transact business in this state has been revoked;

(c) The foreign limited liability company is transacting business in this state without being authorized as provided in this chapter;

(d) The foreign limited liability company has been authorized to transact business in this state and has withdrawn; or

(e) The foreign limited liability company has transacted business in this state without being authorized to do so and has ceased to transact business.

(3) Service on the Secretary of State of any such process, notice or demand shall be made in the same manner as provided in ORS 63.121, except that when the foreign limited liability company served is not authorized to transact business in this state and was not authorized to transact business in this state at the time the transaction, event or occurrence upon which the proceeding is based occurred, the copy of the process, notice or demand shall be sent immediately by registered or certified mail by the plaintiff or the attorney of the plaintiff to the principal office or place of business of the foreign limited liability company, instead

of the last registered office of the foreign limited liability company.

(4) The Secretary of State shall keep a record of all processes, notices and demands served upon the Secretary of State under this section.

(5) After completion of initial service upon the Secretary of State, no additional documents need to be served upon the Secretary of State to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign limited liability company in any other manner permitted by law, or enlarge the purposes for which service on the Secretary of State is permitted where such purposes are limited by other provisions of law. [1993 c.173 §84]

(Withdrawal)

63.734 Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may withdraw from transacting business in this state by applying to the office for withdrawal. The application shall set forth:

(a) The name of the foreign limited liability company and the name of the state or country under whose law it is organized;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the person initiating any proceeding may mail to the foreign limited liability company a copy of any process served on the Secretary of State under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State for a period of five years from the date of withdrawal of any change in its mailing address.

(2) Upon filing by the Secretary of State of the application to withdraw, the authority of the foreign limited liability company to transact business in this state shall cease. [1993 c.173 §85]

(Revocation of Authority)

63.737 Grounds for revocation. The Secretary of State may commence a proceeding under ORS 63.741 to revoke the authority of a foreign limited liability company to transact business in this state if:

(1) The foreign limited liability company does not deliver its annual report to the Secretary of State within the time prescribed by this chapter;

(2) The foreign limited liability company does not pay within the time prescribed by this chapter any fees imposed by this chapter;

(3) The foreign limited liability company has failed to appoint or maintain a registered agent or registered office in this state as prescribed by this chapter;

(4) The foreign limited liability company does not inform the Secretary of State under ORS 63.724 or 63.727 that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued;

(5) An organizer, manager, member or agent of the foreign limited liability company signed a document knowing it was false in any material respect with intent that the document be delivered to the office for filing;

(6) The foreign limited liability company no longer satisfies the requirements of ORS 63.714 (3);

(7) The Secretary of State receives a duly authenticated certificate from the official having custody of the limited liability company records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or has ceased to exist as the result of a merger or other reorganization transaction; or

(8) The period of duration of the foreign limited liability company expires. [1993 c.173 §86]

63.741 Procedure for and effect of revocation. (1) If the Secretary of State determines that one or more grounds exist under ORS 63.737 for revocation of authority of a foreign limited liability company to transact business in this state, the Secretary of State shall give the foreign limited liability company written notice of the determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 45 days after notice is given, the Secretary of State shall revoke the foreign limited liability company's authority.

(3) The authority of a foreign limited liability company to transact business in this state ceases as of the date of revocation of its authority to transact business in this state.

(4) The Secretary of State's revocation of a foreign limited liability company's authority to transact business in this state appoints the Secretary of State as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state.

(5) Revocation of a foreign limited liability company's authority to transact business in this state terminates the authority of the registered agent of the foreign limited liability company. [1993 c.173 §87,108]

63.744 Appeal from revocation. In addition to any other legal remedy which may be available, a foreign limited liability company shall have the right to appeal the Secretary of State's revocation of its authority to transact business in this state pursuant to the provisions of ORS 183.310 to 183.550. [1993 c.173 §88]

63.747 Reinstatement of authority. (1) A foreign limited liability company that has had its authority revoked under ORS 63.741 may apply to the Secretary of State for reinstatement. The application shall:

(a) State the name of the foreign limited liability company and the effective date its authority was revoked; and

(b) State that the ground or grounds for revocation of authority either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the foreign limited liability company's name satisfies the requirements of ORS 63.717, the Secretary of State shall reinstate the authority.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation of authority and the foreign limited liability company resumes carrying on its business as if the administrative revocation of authority had never occurred. [1993 c.173 §89]

RECORDS AND REPORTS

(Records)

63.771 Limited liability company records. (1) Each limited liability company shall keep at an office specified in the manner provided in any operating agreement or, if none, at the registered office, the following:

(a) A current list of the full name and last known business, residence or mailing address of each member and manager, both past and present.

(b) A copy of the articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any 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 currently effective written operating agreements and all amendments thereto, copies of any writings permitted or required under this chapter, and copies of any financial statements of the limited liability company for the three most recent years.

(e) Minutes of any meeting of members or managers as described in ORS 63.150.

(f) Unless contained in a written operating agreement or in a writing permitted or required under this chapter, a statement prepared and certified as accurate by a manager of the limited liability company which describes:

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

(B) The times at which or events on the occurrence of which any additional contributions agreed to be made by each member are to be made; and

(C) If agreed upon, the time at which or the events on the occurrence of which the limited liability company is dissolved and its affairs wound up.

(g) Any written consents obtained from members pursuant to ORS 63.150.

(2) Any limited liability company records are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours.

(3) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this sec-

tion shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company. [1993 c.173 §96]

63.777 Scope of inspection right. (1) A member's agent or attorney has the same inspection and copying rights as the member.

(2) The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

(3) The limited liability company may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The limited liability company may comply with a member's demand to inspect the record of members by providing the member with a list of members that was compiled no earlier than the date of the member's demand. [1993 c.173 §97]

63.781 Court-ordered inspection. (1) If a limited liability company does not allow a member to inspect and copy any records required to be available for inspection, the circuit court of the county where the limited liability company's principal office is located, or, if the principal office is not in this state, where its registered office is or was last located, may summarily order inspection and copying of the records demanded at the company's expense upon application of the member.

(2) If a limited liability company does not within a reasonable time allow a member to inspect and copy any other record, the member may apply to the circuit court in the county where the company's principal office is located, or, if the principal office is not in this state, where its registered office is or was last located, for an order to permit inspection and copying of the records demanded.

(3) If the court orders inspection and copying of the records demanded, it shall also order the limited liability company to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the company proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

(5) No order shall be issued under this section without notice to the limited liability company at least five days in advance of the

time specified for the hearing unless a different period is fixed by the court. The member's request shall be set for hearing at the earliest possible time and shall take precedence over all matters, except matters of the same character and hearings on preliminary injunctions under ORCP 79 B(3). [1993 c.173 §98]

(Reports)

63.784 Certain expense reports to members. If a limited liability company indemnifies or advances expenses to a manager under ORS 63.160 in connection with a proceeding by or in the right of the limited liability company, the limited liability company shall report the indemnification or advance in writing to the members. [1993 c.173 §99]

63.787 Annual report. (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in the state, shall by its anniversary deliver to the office for filing an annual report that sets forth:

(a) The name of the limited liability company and the state or country under whose law it is organized;

(b) The street address of its registered office and name of its registered agent at that office in this state;

(c) The address, including street and number and mailing address, if different, of its principal office;

(d) The names and addresses of the managers; if the limited liability company is managed by its members, the names and addresses of no less than two members;

(e) The category of the classification code established by rule of the Secretary of State most closely designating the primary business activity of the limited liability company;

(f) The federal employer identification number of the limited liability company; and

(g) Additional identifying information that the Secretary of State may require by rule.

(2) The information contained on the annual report shall be current as of 30 days before the anniversary of the limited liability company.

(3) The Secretary of State shall mail the annual report form to any address shown for the limited liability company in the current records of the office. The failure of the limited liability company to receive the annual report form from the Secretary of State shall not relieve the limited liability company of its duty to deliver an annual report to the office as required by this section.

(4) If an annual report does not contain the information required by this section, the Secretary of State shall notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. The domestic or foreign limited liability company must correct the error within 45 days after the Secretary of State gives such notice.

(5) A domestic or foreign limited liability company may deliver to the office for filing an amendment to the annual report if a change in the information set forth in the annual report occurs after the report is delivered to the office for filing and before the next anniversary. This subsection applies only to a change that is not required to be made by an amendment to the articles of organization. The amendment to the annual report must set forth:

(a) The name of the limited liability company as shown on the records of the office; and

(b) The information as changed. [1993 c.173 §100]

DERIVATIVE PROCEEDINGS

63.801 Derivative proceedings. (1) A member may not commence a proceeding in the right of a domestic or foreign limited liability company unless the person was a member of the limited liability company when the transaction complained of occurred or unless the member became a member through transfer by operation of law from one who was a member at that time.

(2) Except as otherwise provided in writing in the articles of organization or any operating agreement, a complaint in a proceeding brought in the right of a limited liability company must allege with particularity the demand made, if any, to obtain action by the managers or the members who would otherwise have the authority to cause the limited liability company to sue in its own right, and either that the demand was refused or ignored or the reason why a demand was not made. Whether or not a demand for action was made, if the limited liability company commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court de-

termines that a proposed discontinuance or settlement will substantially affect the interest of the members or a class of members, the court shall direct that notice be given to the members affected. [1993 c.173 §95]

STATE TAXATION

63.810 Taxation of limited liability companies. For purposes of taxation under ORS chapters 305 to 324, a limited liability company formed under this chapter or qualified to do business in this state as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of taxation under ORS chapters 305 to 324, a member or an assignee of a member of a limited liability company formed under this chapter or qualified to do business in this state as a foreign limited liability company shall be treated as a partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes. [1993 c.173 §101]

MISCELLANEOUS

63.951 Short title. This chapter shall be known and may be cited as the "Oregon Limited Liability Company Act." [1993 c.173 §1]

63.955 Interstate application. A limited liability company organized and existing under this chapter may conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States, or in any foreign country. [1993 c.173 §104]

PENALTY

63.990 Penalty for signing false document. (1) A person commits the crime of falsely signing a document for filing under this chapter if the person signs a document knowing it is false in any material respect with intent that the document be delivered to the office for filing.

(2) Falsely signing a document for filing is a Class B misdemeanor. [1993 c.173 §102]