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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**NO. 311635**

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

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WILLIAM HOUK, et ux

Respondents,

v.

BEST DEVELOPMENT & CONSTRUCTION CO., INC., et al

Defendants,

v.

NICHOLS & SHAHAN DEVELOPMENT LIC AND JOSEPH NICHOLS

Petitioners

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**RESPONDENT'S BRIEF**

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## **APPENDICES**

### **Appendix A**

SB 6531, as enrolled  
House Bill Report on SB 6531  
Senate Bill Report on SB 6531  
Transcript of House Judiciary Committee Hearing on SB 6531,  
February 20, 2006

### **Appendix B**

SHB 2657, as enrolled  
House Bill Report on SHB 2657  
Senate Bill Report on SHB 2657  
Transcript of House Judiciary Committee Hearing on SHB 2657,  
January 20, 2010

### **Appendix C**

LLC Act, SSHB 1235, as enrolled

## I. INTRODUCTION

This case represents the latest chapter in a continuing saga of fly-by-night real estate development companies – or more accurately, the insurers of such companies – that seek to avoid warranty responsibilities for their shoddy construction of residences by allowing the development companies to expire before their warranty obligations have ended. Often, as here, the developer is an LLC, and its members have made no reasonable provision for the company’s obligations and potential liabilities during winding up, as they are required to upon dissolution by law.

The saga began with Division I’s *Ballard Square* decision, which held that Washington’s Business Corporations Act only preserved claims existing before corporate dissolution against abatement, but did not save claims that accrued after dissolution from abatement. *Ballard Sq. Condo. v. Dynasty Constr.*, 126 Wn.App. 285, 291, 108 P.3d 818 (2005), *aff’d on other grounds*, 58 Wn.2d 603, 146 P.3d 914 (2006).

In the aftermath of *Ballard Square*, the Legislature took up two measures. First was a comprehensive reform of the Business Corporations Act, SB 6596, containing a number of provisions to correct *Ballard*

*Square* by, among other things, expressly preserving claims arising after dissolution of a corporation for a specified period. See SB 6596.<sup>1</sup>

The second measure was a new survival or anti-abatement provision for the LLC Act, SB 6531, later codified as RCW 25.15.303:

**The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members, for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced with three years after the effective date of dissolution.** Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

Significantly, SHB 6531 did not expressly say that claims not commenced within three years of dissolution *would* be barred, only that claims so commenced would not be impaired by dissolution.

The testimony in committee, including that of the bill's sponsor Senator Brian Weinstein, shows that the purpose of SB 6531 was to create a survival statute for dissolved LLCs, with no hint of any intent to create a limitations period:

Staff Report: "Senate Bill 6531 deals with the dissolution of limited liability corporations and the **survival of claims** against a limited liability corporation following its dissolution...."

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<sup>1</sup> Available at:  
<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6596&year=2006>

**“There’s no express provision in the LLC law dealing with the survival of claims after dissolution. . . .** What the bill does is provide a three year period during which the dissolution of an LLC does not in any way diminish a remedy or a claim that was filed before or after the dissolution. And I’d be glad to answer any questions.”

Sen. Weinstein: “. . . [T]he reason I’m here is that I heard this *Ballard Square* decision that the last witness, John Steel talked about, from the Bar, this was a decision involving a corporation that dissolved and there were claims against it, and once a corporation dissolves it no longer exists, so you couldn’t sue it. And **there was no survival period. I knew that that was a problem for both corporations and LLCs . . . .**

“So what happened was that I spoke to John and . . . . I asked him, well why don’t you just do it for LLCs as well, he said “Well, that’s a whole different department; we are working on that, but that’s going to be a couple of years.” So I thought well in the meantime, we should take care of this little problem of allowing a three year window in order to sue an LLC that - if they dissolved. So I ran the language by the Bar Association, I worked with them, they said this is fine for the meantime, we have no problem with it, it’s well-worded, and they put their blessing on it, and so I ran the bill, and here’s where we are. . .

(Appendix A, Transcript of House Judiciary Committee Hearing on SB 6531).<sup>2</sup> Likewise, the House and Senate Bill Reports both speak of the measure as one creating a survival statute, not a period of limitation.

Although the Legislature thought it was creating a survival statute for claims against LLCs, to its great surprise (and to the surprise of much of the bar), in *Chadwick Farms Owners Ass’n v. FCH, LLC*, 166 Wn.2d

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<sup>2</sup> [http://www.tvw.org/index.php?option=com\\_tvwplayer&eventID=2006021130](http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2006021130)  
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178, 207 P.3d 1251 (2009), a 5-4 majority of the Washington State Supreme Court ruled in essence that RCW 25.15.303's effort to establish a survival provision was a dead letter. The majority reasoned that under the law as it existed at the time, an LLC's "existence as a separate legal entity" was extinguished not by dissolution of the LLC, as in the case of corporations, but instead by "cancellation" of an LLC's certificate of formation two years after administrative dissolution under RCW 25.15.070(2)(c). Thus the Court reasoned that the survival provisions of RCW 25.15.303 had no application because they only save claims from abatement in the event of "dissolution" of an LLC, but did not save claims from abatement upon the cancellation of its certificate of formation.

In the course of the holding, in *obiter dicta*, the *Chadwick Farms* majority also characterized RCW 25.15.303 as a period of limitations on claims that runs from the effective date of dissolution of an LLC.<sup>3</sup>

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<sup>3</sup> The Court's characterization of former RCW 25.15.303 is *dicta* because the statute was not applied in the case as a limitations period, and it was not necessary to decide whether the statute was in fact a limitations period in order to decide the case. *Chadwick Farms*, 166 Wn.2d at 198 ("In light of our holding that RCW 25.15.303 does not permit actions against a canceled limited liability company, we need not reach the question whether the [limitations provision of the] statute applies retroactively.")

The *dicta* suggestion in *Chadwick Farms* that former RCW 25.15.303 was a statute of limitations was simply wrong. The statute merely said that the dissolution "does not take away or impair any remedy" unless a claim is not commenced within three years. It only preserves claims, and never says that unless suit is filed within three years of dissolution, all causes of action expire. The conclusion that after three years, remedies are "taken away or impaired" is not warranted by the language of the provision, or by the expressed intent of the Legislature. At best, the suggestion rests on one *possible* negative implication of the language, as discussed below. It is more plausible that the Legislature meant that once three years passes from dissolution, unfiled claims are no longer saved

To remedy what it perceived to be the erroneous result and poor public policy embodied in the *Chadwick Farms* decision, the Legislature quickly enacted Substitute House Bill 2657. Effective June 10, 2010, SHB 2657 revised the LLC Act by removing all trace of language from the LLC Act that suggested that a “cancelled” LLC no longer exists or is incapable of being sued. Instead, an LLC that dissolves, without more, remains subject to suit indefinitely. The amendatory legislation also changed RCW 25.15.303 by providing that its three year period, whatever it means, would only come into effect if a dissolved LLC files a “certificate of cancellation.” Moreover, the amendments instituted a new procedure whereby an LLC may give general notice that it has dissolved to the world, and specific notice to known creditors, and thereby terminate liability for claims that are not asserted during the winding up period. (See Appendix B, SHB 2657, as enrolled, esp. §§ 2(2)(c), 7(4), 9 & 11.)

The House Bill Report, summarizing testimony in support of the 2010 amendments, noted that it would “address and resolve two issues that need immediate attention. First, under the *Chadwick Farms* decision

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from abatement, if that is what the law calls for. Had the legislature meant to say that unless a claim is filed within three years of dissolution, it clearly knew how to say so.

It should be noted that Division I has also described former RCW 25.15.303 as a limitations period, as defendants point out. See *Serrano on Cal. Condo. Homeowners Ass'n v. First Pac. Dev., Ltd.*, 143 Wn.App. 521, 524, 178 P.3d 1059 (2008). The *Serrano* decision is not binding on this court. *State v. Johnston*, 143 Wn. App. 1, 14, 177 P.3d 1127 (2007), *review pending*, 2013 Wash. LEXIS 334 (2013).

issued by the Washington Supreme Court, a certificate of cancellation abates all legal claims. This decision leaves creditors in an untenable situation.” Appendix B, House Bill Report for SB 2657, p. 4.

The Senate Bill Report likewise identified *Chadwick Farms* as the impetus for the urgent passage of SHB 2657, and notes that the entire concept of “cancellation” was included in the original Act not for the purposes of bringing about an abatement of claims, but merely to keep an aging computer system in the secretary of state’s office functioning efficiently!<sup>4</sup>

Don Percival, chair of the subcommittee of the WSBA’s Partnership and LLC Law Committee that drafted the 2010 amendments to the LLC Act (he was also a primary drafter of the original LLC Act), explained to the House Judiciary Committee on January 20, 2010 that

It’s really a very simple bill. I think it can fairly be described as **technical corrections**, and that’s certainly the mindset we had when going into the process of drafting this version of the bill.

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<sup>4</sup> “The [LLC Act] as it was proposed to us originally did not include a process of cancellation. The concept of cancellation stemmed from a concern expressed by the [Office of the Secretary of State] with their computer system and a perceived need to have a clear end to an LLC so it may be wiped off the books.” Appendix B, Senate Bill Report for SB 2657, p. 3.

(Appendix B, Transcript of House Judiciary Committee Hearing on SHB 2657.)<sup>5</sup> Moreover, with respect to the reason for the bill, he testified that

I don't think we intended that cancellation of the certificate would result in the inability to bring actions against the LLC or the inability of the LLC to take actions. That was the extra step that the *Chadwick Farms* court took last year that produced the anxiety among those of us who are familiar with LLC practice.

Id. He further explained that SHB 2657 would correct that procedural deficiency in order to provide a remedy to creditors of defunct LLCs.

[I]n Section One the bill does away with the statement that the cancellation of the LLC's Certificate of Formation, that the separate existence of the LLC as an entity continues until cancellation of the Certificate of Formation . . . . So, Section One eliminates the statement that suggests, by negative inference, that if a Certificate of Cancellation is filed the LLC goes, "poof," goes away and that was the basis for the *Chadwick Farms* decision.

Id.

## II. FACTS

### A. The LLC, Its Members, and the Sale Transaction.

Defendant Nichols & Shahan Developments LLC ("the LLC") was formed to act as a developer of residential housing, including the residence which is the subject of this lawsuit. (CP 112). The LLC's managing members, defendants Joseph Nichols ("Nichols") and Burt Shahan ("Shahan"), were responsible for all major decisions of the company under

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<sup>5</sup> [http://www.tvw.org/index.php?option=com\\_tvwplayer&eventID=2010011211](http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2010011211)  
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the terms of its operating agreement. (CP 125). Although the operating agreement is not specific, presumably this includes winding up decisions.

On September 22, 2004, Nichols signed a real estate purchase and sale agreement (“REPSA”) for the subject residence with the plaintiffs, the Houks. (CP 154). The REPSA identifies Nichols as the seller, and his signature line does not reference the LLC. (CP 154, 158). When the sale was consummated on or shortly after October 11 of 2004, however, title was transferred by the LLC to the Houks. (CP 168).

**B. LLC’s Initial Notice of Houk Claims.**

Shahan, a managing member of the LLC, was advised by the Houks of construction defects in the residence the LLC had built and sold to them as early as November of 2004. (CP 8, 50, 90). Thus by November, 2004, the LLC was aware that it had outstanding warranty obligations and potential liabilities to the Houks. If Nichols’ affidavit that the Houk residence is the only home the LLC ever built is believed, then the LLC knew that its *one and only customer* had a potential claim against it as of late 2004.

**C. Enactment of Former RCW 25.15.303.**

Effective June 7, 2006, Washington’s LLC Act was amended to include a three year survival period for claims against LLCs, running from the effective date of dissolution. Former RCW 25.15.303. Defendants

contend that this new section also operates, apparently by negative implication, as a limitations period on claims that are not commenced within three years of dissolution.<sup>6</sup>

**D. Putative Administrative Dissolution of the LLC.**

At some undetermined point prior to October 2, 2006, it appears that the LLC did not file its annual renewal paper work with the Secretary of State, or did not file its annual fee, or both. The only evidence on the point in the record is a document entitled “Certificate of Administrative Dissolution” dated October 2, 2006, and directed to the LLC’s registered agent at his registered address.<sup>7</sup> (CP 174).

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<sup>6</sup> If former RCW 25.15.303 is a limitations statute, plaintiff agrees with defendants’ unstated assumption it should apply prospectively to the defendant LLC as to the claims that had already accrued against it. See *Unruh v. Cacchiotti*, 172 Wn.2d 98, 117-118, 257 P.3d 631 (2011)(“Under the general rule . . . we presume the new limitations period applies prospectively. And if the claim accrued before the date of enactment, the limitations period begins to run from the date of enactment.”)

Thus, if the LLC was in fact administratively dissolved on October 2, 2006, then the putative limitations period would have expired three years later, on October 2, 2009.

However, as appears more fully below, the limitations period was not triggered because of the LLC’s continued business activities following administrative dissolution and failure to wind up, making it a *de facto* subsisting LLC that is barred from raising a dissolution that was not carried out as a defense. Moreover, the period never expired because the LLC’s subsequent termination as a legal entity tolled the limitations period with a year remaining to the period, until the LLC’s legal existence was restored by the 2010 amendments to the LLC Act. By the time the LLC was restored to existence, the limitations period had changed again. Under *Unruh* the new period also applies prospectively. The new version of RCW 25.15.303 would require the LLC to file a “certificate of dissolution” before taking advantage of any limitation of claims it establishes. The LLC concedes it has not filed a certificate of dissolution.

<sup>7</sup> The LLC’s registered agent was Robert Beach, and his address was 2829 South Grand Blvd., Suite 302, Spokane. (CP 120).

Nichols claimed in deposition that the attorney who acted as the LLC's registered agent closed up shop (two floors above him), and so the members did not receive any notice that the LLC had failed to file for its annual renewal. (CP 192, 119, 120).<sup>8</sup>

The law at this time provided that the secretary of state may commence a proceeding under RCW 25.15.285 to declare an LLC administratively dissolved if an LLC does not pay its annual fees and deliver an annual report. RCW 25.15.280. To commence an administrative dissolution proceeding, the secretary of state must send the LLC written notice of the proceeding to its principal place of business, and if the shortcomings are not corrected, the LLC is deemed "dissolved" 60 days after that notice is sent. RCW 25.15.285(3).

The record is silent as to when (if ever) the secretary of state gave the required notice of commencement of a proceeding under RCW 25.15.285 to administratively dissolve the LLC.

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<sup>8</sup> The LLC's principal place of business was 2829 South Grand Blvd., Suite 101, Spokane, (CP 119), two floors below the registered agent.

Nichols' claim that the LLC did not receive notice of the dissolution proceeding may not be true because the notice was supposed to be directed by the secretary of state to the LLC's principal place of business, not the registered agent. What actually happened is not known on the current record. Thus at this point the trier of fact could conclude either that Nichols or another member in fact received notice and knew of the dissolution proceeding, but took no steps to wind up the LLC and make provision for its obligations, or that the dissolution proceeding was never properly commenced in the first place, so the company never dissolved. In any event, Nichols is clear that the members had no intention of allowing the LLC to lapse. (CP 194).

The record is inconclusive as to the actual date, if any, of administrative dissolution of the LLC following notice and commencement of the dissolution proceeding. The document entitled “Certificate of Administrative Dissolution” dated October 2, 2006 states that “In accordance with **RCW 23B.14.210** the above **corporation** is hereby administratively dissolved as of October 2, 2006” for failure to file “an annual **list of officers**/license renewal within the time set forth by law.” (CP 174) (Emphasis added.) But of course, RCW 23B, the Business Corporations Act, has no application to an LLC, and LLCs have no “officers” as such. Exactly what the document is intended to do or mean is thus not apparent from its face.

**E. The LLC’s Continued Operations.**

In his affidavit in support of summary judgment, Nichols averred that the LLC “ceased all its business activities” after consummation of the Houk sale in October of 2004. (CP 114). However, in deposition Nichols testified that in 2005 the LLC applied for insurance, and that he “brought [the LLC] into the mix on building the duplex up on lot one of Qualchan Hills.” (CP 295). By way of further explanation, Nichols stated that “Nichols Shahan [the LLC] was hiring Best Construction to build the duplex through the Overlook, LLC.” (Id.) The LLC hired Best

Construction and defendant Shahan to oversee the construction of the duplex, which was finished, probably, in 2007. (CP 191).

**F. Cancellation of the LLC and Tolling of the Limitations Period.**

If, as the LLC contends, the “Certificate of Administrative Dissolution” reflects the secretary of state’s properly-executed action to dissolve the LLC, then under the LLC Act as written in 2006 through 2008, the LLC’s “Certificate of Formation” was automatically cancelled by the secretary of state two years later, on October 2, 2008. “[W]hen the secretary of state administratively dissolves a limited liability company for failure to pay fees or file reports (as here), cancellation of the certificate of formation automatically occurs two years later if the company does not seek reinstatement. See ... [former] RCW 25.15.290(4)...” *Chadwick Farms*, 166 Wn.2d at 190.

According to the Supreme Court in *Chadwick Farms*, this cancellation of an administratively dissolved LLC’s certificate of formation terminates the company’s legal existence, rendering it incapable of being sued, or maintaining suit. 166 Wn.2d at 195 and 199. As discussed below, that termination of the LLC tolled all statutes of limitation by operation of law.

**G. Reinstatement of the LLC's Legal Existence by Operation of Law, And Enactment of New Prerequisites to LLC Immunity Following Dissolution.**

Effective June 10, 2010, the Legislature made substantial revisions to the LLC Act. First, the provision in RCW 25.15.070(2)(c) which formerly indicated that cancellation of a certificate of formation ended an LLC's "separate legal existence" was excised from the Act. Second, the amended Act established a new procedure whereby a dissolved LLC may notify known claimants of the dissolution, state a deadline for assertion of claims, and receive a bar to the prosecution of such claims if they are not timely asserted. RCW 25.15.298. Finally, the Act was amended to provide that unless a "Certificate of Dissolution" commencing a winding up period is filed by the LLC, the even the passage of three years will not impair creditors' rights to pursue claims against the LLC, or the LLC's rights to pursue claims itself. RCW 25.15.303 (as amended).

As discussed below, the removal of all legal significance of the cancellation of an LLC's Certificate of Formation restored the LLC to legally extant status. This in turn either restarted the clock on the old limitations period RCW 25.15.303 (if that is what it is), or called for application of the new requirement that the three year period only applies if a certificate of dissolution is also filed by the LLC.

**H. Commencement of This Suit.**

This suit was commenced approximately 6 months later, on December 16, 2010, by filing. (CP 1).

**III. ARGUMENT**

**A. Standard of Review**

Defendants correctly identify the standard of review as *de novo*.

In addition, under RAP 2.5 this court “may affirm the trial court on any grounds established by the pleadings and supported by the record.” *Otis Hous. Ass'n v. Ha*, 165 Wn.2d 582, 587, 201 P.3d 309 (2009). See also RAP 2.5(a)(“A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.”)

**B. Former RCW 25.15.303 Was Not a Limitations Period.**

The legislative history of the 2006 amendment to the LLC Act show that former RCW 25.15.303 was enacted to prevent claims from abating upon dissolution of an LLC, and that is all. It was a survival statute, and only a survival statute. It said simply that dissolution “does not take away or impair remedies” unless suit is not filed within three years of dissolution. The statute does not say that the passage of three years necessarily impairs remedies or terminates them. It is equally plausible that the Legislature simply meant that if suit is not filed within

the three year “safe harbor” period, then the question of whether remedies are impaired by an LLC’s dissolution (through abatement, for example) is governed by other law. Given the legislative history and testimony, as well as the context in which the measure was enacted as an emergency survival provision, this latter reading is the most plausible.

At best, considered as a limitation period, the statute is ambiguous because multiple inferences are possible as to the legal effect of the expiration of three years from dissolution. Given that ambiguity, the court may look to the Legislative history and purpose to evaluate whether a limitations period was intended. *City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013). As demonstrated in the Introduction, the Legislature’s purpose was solely preservation of claims from feared abatement upon dissolution. The Legislature, unfortunately, picked the wrong triggering event for abatement under the former LLC Act.

To the best of counsel’s knowledge, no Washington statute of limitations articulates an intent to bar actions in such a patently ambiguous manner – by mere plausible negative implication. On the contrary, the Legislature customarily uses clear and affirmative language such as “Any action to enforce a claim ...shall be forever barred unless commenced within four years,” RCW 19.86.120, or similar. See, for example, RCW

4.16.020 through RCW 4.16.150; RCW 4.16.340; RCW 42.56.550(6);  
RCW 60.04.141.

If the court is to find a limitations period by mere plausible negative implication, the negative implication should be the *only* plausible one. But that is not the cases here. The Legislature said nothing about *barring* claims that were not filed in the survival period, and probably intended that the question of what happens if suit is not filed should be resolved by other law. This court should therefore decline to find that former RCW 25.15.303 clearly imposed a limitations period at all, given that the statute does not purport to bar claims by its plain language, given that it was enacted in an effort to preserve claims from possible abatement and not to establish a limitations period, and given that the conclusion that it operated as a limitations period is not a required negative implication from the statutory language.

**C. Even Assuming Former RCW 25.15.303 is a Statute of Limitations, Defendants Failed to Establish When, If Ever, the LLC was In Fact Administratively Dissolved so as to Commence the Running of that Limitations Period.**

Henceforth, plaintiff assumes that defendants are correct that former RCW 25.15.303 was a period of limitations. Even if that is so, however, defendants cannot prevail in their summary judgment motion on the record presented.

“The statute of limitations is an affirmative defense, and the defendant carries the burden of proof.” *Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 267, 189 P.3d 261 (2008), citing CR 8(c) and *Haslund v. City of Seattle*, 86 Wn.2d 607, 620-21, 547 P.2d 1221 (1976). Defendants failed to carry their burden of proof.

The only evidence of when, if ever, the LLC was administratively dissolved is an ambiguous document that does not reference the governing law. Nichols has no personal knowledge of when or why the company may have been dissolved. There is no competent testimony to establish the date of legal dissolution of the LLC, or even the requisite notice to commence a dissolution proceeding.

Defendants failed to meet their burden of proof, so entry of summary judgment in the defendants’ favor would have been improper.

**D. The LLC May Not Raise Defenses Based on Dissolution (or Subsequent Cancellation) Because it Continued to Conduct Business as a Subsisting, *de facto* LLC Following its Putative Administrative Dissolution.**

Defendants say their continuing business operations following dissolution are “immaterial” to the limitations period. Defendants are mistaken: a subsisting, *de facto* LLC which, instead of winding up, continues to actively prosecute business, may not raise its legal status as a defense under established Washington law.

Under the LLC Act at the time, after dissolution an LLC's legitimate activities are limited to winding up. Former RCW 25.15.295(1)(See Appendix C, the Limited Liability Company Act, SSB 1235, as enrolled in 1994, §806) and RCW 25.15.270(2) (Making reasonable provision for known obligations and unmatured claims).

Commencement of new business operations, carrying on construction operations on multi-family housing, and failure of the members to take any steps to actually wind up the LLC or make any provision for its known obligations are all clear indicators of an ongoing, *de facto* LLC.<sup>9</sup> In order to find that a company is a *de facto* legal entity

. . .three essentials are necessary: (a) a charter or general law under which such corporation as it purports to be might lawfully be organized; (b) an attempt to organize thereunder; and (c) actual user of the corporate franchise.

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<sup>9</sup> While the common law of *de facto* corporations and partnerships is well-developed, no case in Washington has yet applied the common law doctrine to an LLC. However, the doctrine has been applied by analogy by other courts to bar a *de facto* LLC from denying its existence (regardless of reliance by the plaintiff, as required where corporation by estoppel is alleged). See, for example, *Duray Dev., LLC v. Perrin*, 288 Mich. App. 143, 159, 792 N.W.2d 749 (Mich. Ct. App. 2010); *Matter of Hausman*, 13 N.Y.3d 408, 412, 921 N.E.2d 191 (N.Y. 2009) (“The parties do not dispute, and both courts below concluded, that the de facto corporation doctrine is applicable to limited liability companies. We agree.”); *Leber Assocs., LLC v. Entm't Group Fund, Inc.*, 2003 U.S. Dist. LEXIS 13009 (S.D.N.Y. July 22, 2003); *Henderson Apt. Venture v. Miller*, 2012 U.S. Dist. LEXIS 94156 (D. Nev. July 6, 2012); *Global BTG LLC v. Nat'l Air Cargo, Inc.*, 2011 U.S. Dist. LEXIS 70386 (C.D. Cal. June 29, 2011); *Fashion Brokerage Int'l, LLC v. Jhung Yuro Int'l LLC*, 2011 U.S. Dist. LEXIS 25687 (D.N.J. Mar. 14, 2011) (“[A] business may be treated as a de facto limited liability company notwithstanding the absence of formal organization if: (1) there was a bona fide attempt to organize under the applicable statute and colorable compliance with the statutory requirements; and (2) the company actually used or exercised company powers pursuant to the applicable statute.”)

*Mootz v. Spokane Racing & Fair Ass'n*, 189 Wash. 225, 228, 64 P.2d 516 (1937). All three requisites are met here:

(1) The LLC had a charter under which it purported to be lawfully organized.

(2) An attempt was made to organize it as such, and its failure to maintain its status was allegedly inadvertent. Indeed, the members had no idea that the LLC had been dissolved, and believed the company to be fully legitimate, because the company's attorney and registered agent did not forward on notice of the company's dissolution to them.

(3) The LLC, through its members, continued to act by entering into contracts of insurance, hiring a general contractor to build a duplex, and employing a construction supervisor.

*A de facto* corporation may be found post-dissolution:

In this state, the common-law doctrine of *de facto* corporation has been applied to postdissolution situations. See *Patterson v. Ford*, 167 Wn.121, 125, 8 P.2d 1006 (1932) (corporation which failed to pay the annual license fee was still a corporation *de facto* and its existence, or exercise of corporate powers, could not be collaterally attacked); see also 8 WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 3844 (Timothy P. Bjur et al., eds., rev. ed. 1992) . . .

*Equipto Div. v. Yarmouth*, 134 Wn.2d 356, 369-370, 950 P.2d 451 (1998).

The legal effect of *de facto* entity status is that the parties dealing with a *de facto* entity, *and the entity itself* are both barred from drawing its status into question. Thus, in *Bash v. Culver Gold Min. Co.*, 7 Wash. 122, 127, 34 P. 462 (1893), the court noted that

Where, under statutes like ours, steps have been taken to organize a corporation, which are irregular, and there has followed a course of corporate action, there may be a *de facto* corporation, **the existence of which cannot be denied either by itself or by those dealing with it.**

(Emphasis added.) And, in *Purdin v. Washington Nat'l Bldg., Loan & Inv. Ass'n*, 41 Wash. 395, 396-397, 83 P. 723 (1906) the court stated that

The rule, sustained by the overwhelming current of authorities, and based on considerations of public policy, is that, where a reputed corporation is acting under forms of law, unchallenged by the state, **the validity of its organization cannot be drawn in question by private parties**

(Emphasis added).

Applying the common law of *de facto* corporations by analogy to the LLC, the defendants should not be heard to raise the LLC's dissolution as a means to an affirmative defense. The limitations period in RCW 25.15.303 is predicated on a true dissolution, which requires winding up a business and making reasonable provision for known obligations. Insofar as the LLC did not actually wind up, did not make provision for its obligations, and instead entered into new business, it should be considered a

*de facto* LLC, and all defendants barred from raising the “dissolution” they never carried out as a means to escape liability.

**E. Any Limitations Period Under Former RCW 25.15.303 was Tolled Between the End of the LLC’s Legal Existence (October 2, 2008) and the Restoration of its Legal Existence by SHB 2657 (June 10, 2010).**

The LLC’s limitations period argument also fails because the company’s termination, by automatic cancellation of its certificate of formation, tolled the limitations period as a matter of law until the LLC was restored to legal existence in 2010.

The common law of Washington tolls statutes of limitation in situations where a claimant is prevented by operation of law or by circumstances from commencing suit. “Tolling means the statutory limitation periods are suspended because a . . . situation, such as the defendant's absence or concealment, prevent commencement of the action. Once the disability or condition has disappeared, the statutory limitation periods resume. *Duke v. Boyd*, 133 Wn.2d 80, 94, 942 P.2d 351 (1997) (Talmadge, J., concurring).

This type of tolling includes situation like ours, where a positive rule of law precludes a plaintiff from commencing suit.

[T]he operation of the statute of limitations was tolled during appellant's period of immunity from service of process . . . . Although generally exceptions to a statute of limitations will not be implied, nevertheless where there is

an inability to bring a lawsuit this rule is not applied and exceptions are created.

**When a person is prevented from exercising his legal remedy by some positive rule of law, the time during which he is prevented from bringing suit is not to be counted against him in determining whether the statute of limitations has barred his right even though the statute makes no specific exception in his favor in such cases.** *Braun v. Sauerwein*, 77 U.S. (10 Wall.) 218, 19 L. Ed. 895 (1869); *Amy v. Watertown (No. 2.)*, 130 U.S. 320, 32 L. Ed. 953, 9 S. Ct. 537 (1889); *Wagner v. New York, O. & W. Ry.*, 146 F. Supp. 926 (M.D. Pa. 1956); *Davis v. Wilson*, 349 F. Supp. 905 (E.D. Tenn. 1972).

*Seamans v. Walgren*, 82 Wn.2d 771, 774-775, 514 P.2d 166 (1973)

(Emphasis added).

Under the same doctrine, when a statutory obstacle to commencing suit is removed, the limitations period begins to run again. Thus, “Where such a constitutional or statutory obstacle to bringing suit is legislatively removed, it has been held that the statute runs on from the date of amendment lifting the bar.” *Stephens v. Stephens*, 85 Wn.2d 290, 293, 534 P.2d 571 (1975) (citations omitted).

In addition to common law, Washington statutory law tolls limitations periods upon the “absence” of a defendant from the jurisdiction. Under RCW 4.16.180, “the time of his or her absence . . . shall not be deemed or taken as any part of the time limit for the commencement of such action.”

Here, even accepting the defendants' argument that the LLC was administratively dissolved on October 2, 2006, it is beyond dispute that as of October 2, 2008 the LLC's certificate of formation was cancelled by operation of law, and it could not at that point sue or be sued. *Chadwick Farms*, 166 Wn.2d at 190.

Accordingly, the limitations period in RCW 25.15.303 was *tolled* during the period of the LLC's non-existence. The limitations period was three years from dissolution, so a year remained to the limitations period at the time the LLC ceased to exist. The LLC was restored to legal existence in June of 2010 (as discussed in greater detail below), at which point the remaining year of the limitations period began to run again under *Stephens*. This suit was timely commenced within that year.

**F. Because the Limitations Period of Former RCW 25.15.303 Never Applied to the Defendants, and Never Expired as to the LLC, the 2010 Amendments to RCW 25.15.303 Apply In This Case.**

Former RCW 25.15.303 was not triggered because of the *de facto* continuing status of the LLC which did not wind up, and even if triggered the period never expired because it was tolled by operation of the LLC's termination. Thus, the question becomes whether the new limitations period in the 2010 amendment to RCW 25.15.303 now applies following the LLC's formal restoration to extant status?

The answer is that it does, because new limitations periods apply prospectively to accrued claims on which a pre-existing limitations period is running:

A statute that imposes a new limitations period is presumed to run prospectively, unless the legislature intends otherwise. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 584, 146 P.3d 423 (2006). Thus, when a claim accrues before the statute goes into effect, the new limitations period begins to run on that claim from the effective date of the statute's enactment. *Hanford v. King County*, 112 Wash. 659, 662, 192 P. 1013 (1920) (“[T]he limitation of the new statute, as applied to pre-existing causes of action, commences when the cause of action is first subjected to the operation of the statute ... .”); *Merrigan v. Epstein*, 112 Wn.2d 709, 717, 773 P.2d 78 (1989) (“[T]he new limitations law operates ... on causes of action which accrued prior to the change in law, but the new period of limitation starts to run from the effective date of the statute which makes the change.” (emphasis omitted) (quoting Lewis H. Orland & David G. Stebing, *Retroactivity in Review: The Federal and Washington Approaches*, 16 Gonzaga L. Rev. 855, 882 (1981))); *Torkelson v. Roerick*, 24 Wn. App. 877, 879, 604 P.2d 1310 (1979) (“[A] new statutory limitation may operate on a claim that has accrued prior to the amendment of the statute of limitation by beginning to run as of the effective date of the amended statute.”).

*Unruh*, 172 Wn.2d at 98.

The defendants have always been free since 2010 to take advantage of the revised three year limitations period in current RCW 25.15.303, but in order to do so the LLC must file a certificate of dissolution certifying its winding up. Defendants conceded they have not

done so. The trial court, therefore, was correct in denying summary judgment because the defendants have not fulfilled the prerequisites to claiming the LLC Act's particularized limitations or non-claim provisions.

**G. The 2010 Amendment of the Survival Period of LLCs and the Amendment of the Limitations Period at RCW 25.15.303 are Clearly Curative and Remedial, and Should be Applied to Preserve the Claims Against Defendants.**

Even setting all of the foregoing aside, the 2010 amendments to the LLC Act end any hope for the defendants' limitations period arguments. The question of whether those amendments apply involves first, analysis of any potential retroactive application of the 2010 amendatory legislation, and second, consideration of the fundamental equity concerns underlying a retroactivity analysis. The analysis must consider first whether the new definition of the period of LLC existence should apply, and second whether the new three year "limitations" period for claims against dissolved LLCs should apply. We consider these separately below.

**1. The 2010 Amendments Restoring the LLC to Legal Existence Are Presumed to be Remedial and Retroactive.**

Remedial amendments make changes to practice, procedure, and most importantly – the availability of remedies. *State v. Pillatos*, 159 Wn.2d 459, 473, 150 P.3d 1130 (2007).<sup>10</sup>

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<sup>10</sup> A "curative" amendment is one that "clarifies" or "technically corrects" an ambiguous statute, and is likewise retroactive if no judicial construction of the original

The 2010 amendments to the LLC Act established a new period for survival of LLCs, and in so doing established remedies where none previously existed against terminated LLCs by reason of abatement. Specifically, the 2010 amendments make remedies available to LLC creditors despite the procedural obstacle formerly presented by the impact of a purely bureaucratic and procedural act, to wit, “cancellation” of an LLC’s “certificate of formation.” By removing the legal meaning attached to that purely bureaucratic act, the Legislature made a significant change in the procedures governing LLCs, not to vested rights. In discussing the survival period of LLCs, there is no issue of restoring “expired” or “stale” *claims* under a vested right to a limitations period – the question is purely an administrative and procedural one as to the period of existence of an LLC as a legal entity.

As far as counsel is aware, every court that has ever considered the matter has held that a new corporate survival period is *by its nature remedial* and therefore retroactive, and that such new procedures do not

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statute is contravened. *1000 Virginia Ltd. P'ship v. Vervecs*, 158 Wn.2d 566, 584, 146 P.3d 423 (2006). The change in the period of LLC existence is also a technical correction, and thus curative as Don Percival’s testimony quoted above indicates. No issue of contravening *Chadwick Farms* arises because during the period that *Chadwick Farms*’ construction of the LLC Act’s provisions regarding cancellation of a certificate of formation was the law, up until enactment of the 2010 amendments, terminated LLCs did not exist as legal entities. The restoration of terminated entities under various circumstances is a commonplace feature of statutes governing corporate entities.

change the scope of any substantive rights existing at the time the claims against the dissolved entity accrued.

In *Quintana v. Los Alamos Medical Ctr.*, 119 N.M. 312, 889 P.2d 1234 (N.M. Ct. App. 1994) Plaintiff filed suit against a medical center alleging malpractice committed on his son, who died in 1959 during a procedure to have cavities filled. The medical center was dissolved in 1963, and Plaintiff did not file suit until 1990.<sup>11</sup> Under the law in effect at the time the medical center dissolved, claims against a dissolved corporation never abated; in the intervening years, however, a new statute set up a two-year survival period. Thus, the question was did the open-ended survival period in force on dissolution apply, or did the short survival period that was later enacted apply? The court held the new survival period governed because it merely changed procedures, impacting no vested interests:

Statutes concerning the survival period of a corporation after dissolution are generally construed as procedural rather than substantive. . . . **As a remedial or procedural matter, the survival period adopted after dissolution may apply to corporations dissolved before the effective date of the new survival statute.**

119 N.M. at 314 (citations omitted).

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<sup>11</sup> The court assumed the statute of limitations was tolled by concealment of the son's cause of death, so the suit was timely.

In *Walden Home Builders v. Schmit*, 326 Ill. App. 386, 62 N.E.2d 11 (1945), the plaintiff dissolved corporation had its claim for breach of contract dismissed for want of capacity to sue. The breach had occurred in 1937. The plaintiff dissolved in 1940. Under the common law at the time of dissolution, the corporation's claims did not survive dissolution. In 1941, however, a survival period for claims by the corporation was enacted, allowing suit to be brought by a dissolved corporation within two years after dissolution. The court held that the newly enacted survival period governed, again because it altered no vested interests:

To my mind, **the statute is one which merely provides a different method of winding up and administering the affairs of dissolved corporations. It creates no causes of action and deprives no one of property.** . . . [I]t appears to be well settled that when a corporation is dissolved, its assets do not vanish and its debtors are not absolved or released.

....

No valid reason has been suggested why the amendment should not apply to corporations previously dissolved.

62 N.E.2d at 13.

Finally, in *United States v. Village Corp.*, 298 F.2d 816, 816-17 (4<sup>th</sup> Cir. 1962), the court posed the issue as follows:

The District Court held that a Virginia statute permitting the institution at any time of suits against Virginia corporations in the process of liquidation does not apply to suits against corporations the charters of which have been revoked prior to the enactment of the statute. We think it does.

The court explained that the new survival statute and its

**complete reversal of the common law rule of abatement of actions upon dissolution are remedial measures entitled to a liberal construction** to effectuate their purposes.

298 F.2d at 819 (citations omitted.) Thus the new survival statute applied retroactively to a corporation already dissolved at the time of enactment.

The 2010 amendment to the period of LLC existence is silent on whether it is retroactive (though its drafter certainly viewed the amendment as mere technical correction, which is a retroactive curative measure.) That silence, however, is not dispositive of the question of retroactivity. If silence were dispositive, the entire body of law dealing with implied retroactivity of “remedial” measures would be unnecessary.

Here, the legislative intent to address the absurd policy implications of *Chadwick Farms* is clear. The amendment was enacted during substantial controversy on the issue, which is itself a strong indicator of retroactive intent. *McGee v. DSHS*, 142 Wn.2d 316, 325, 12 P.3d 144 (2000) (“The Legislature’s intent to clarify a statute is manifested by its adoption of the amendment “soon after controversies arose as to the interpretation of the original act[.]”)

The general rule is articulated in *State v. Pillatos*, 159 Wn.2d at 473, where the court noted that

**[R]emedial statutes are generally enforced as soon as they are effective, even if they relate to transactions predating their enactment.** See *Miebach v. Colasurdo*, 102 Wn.2d 170, 180-81, 685 P.2d 1074 (1984). “A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Id.* at 181 (citing *Johnston v. Beneficial Mgmt. Corp.*, 85 Wn.2d 637, 641, 538 P.2d 510 (1975)). Remedial statutes are an exception to the general rule that statutes operate prospectively. “[I]f a statute is remedial in nature and retroactive application would further its remedial purpose,” it will be enforced retroactively. *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981). The relevant portions of Laws of 2005, chapter 68 are remedial law, as they relate only to procedures and do not affect substantive or vested rights. [*Viz.*, whether procedurally a jury is to be empanelled to determine whether an exceptional sentence should be imposed.]

(Emphasis added.) See also *Marine Power & Equip. Co. v. Wash. State Human Rights Com. Hearing Tribunal*, 39 Wn. App. 609, 694 P.2d 697 (1985) and *In re Marriage of Flannagan*, 42 Wn. App. 214, 222, 709 P.2d 1247 (1985).

In *Ballard Square* itself, the Supreme Court applied a new corporate survival statute retroactively, *even when it was enacted while the litigation was pending*. While the Court noted that retroactive intent was expressly set forth in the statute at issue there, it also noted that “A statute will also be retroactively applied if it is curative or remedial.” *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 617 146 P.3d 914 (2006), citing *1000 Va. Ltd. P'ship v. Vertecs*

*Corp.*, 158 Wn.2d 566, 146 P.3d 423 (2006). The Court explained that ***the length of time in which claims may be prosecuted against entities that exist purely by Legislative grace may be changed without impacting any vested rights.*** 158 Wn.2d at 617-618.

Including *Ballard Square*, this court now has before at least four cases involving the enactment of a survival statute for claims involving a dissolved corporate entity. In every one, the court applied the new survival statute retroactively as a remedial measure impacting no vested interests, because the law of survival of claims against purely legal entities can be altered at will by the Legislature. This court should do the same.

In short, the 2010 LLC Act amendments to the LLC survival period are technical, administrative, affect procedures and practices related to winding up, and provide for preservation of remedies that were previously unavailable as a result of such procedures. The amendments are therefore presumed to apply retroactively, in order to effectuate the Legislature's rightful policy concerns about the bad public policy announced in the *Chadwick Farms* decision. Here, that means that the new provisions deeming the LLC to have continuing existence and susceptibility to suit apply to it.<sup>12</sup>

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<sup>12</sup> Even if the 2010 amendments reinstating the legal existence of the LLC were not plainly remedial and retroactive, the court here should assume they are because the LLC has admitted that it still exists. The LLC requests attorney fees. Only a subsisting

**2. Retroactive Application of the Amended Limitations Period Is Not Required to Affirm the Trial Court’s Denial of Summary Judgment as to the LLC, and Retroactive Application of the Amended Limitations Period is Proper Under the Circumstances as to Both the LLC and its Members.**

As shown, a party has no right to rely on a given statutory period for corporate existence. But if retroactive application of an amendment to a statute of limitations, for example, will “disturb a party’s reasonable reliance on what the law formerly said” and thereby cause “substantial injustice,” that is pertinent to whether a new statute should be applied to existing transactions or situations. *Hale v. Wellpinit School Dist.*, 165 Wn.2d 494, 507, 198 P.3d 1021 (2009). Thus as defendants note, in the case of amended limitations periods the courts frequently speak of defendants having a “vested right” to a limitations statute that has expired.

In this case, however, application of the rule generally forbidding retroactive application of a new limitations period after expiration of the old one is inappropriate for at least six reasons.

First, RCW 25.15.303 was not a limitations period to begin with, and so there was no vested right to its expiration.

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legal entity is entitled to assert such a claim, and the LLC should therefore be judicially estopped to deny its continuing existence since June 10, 2010.

Second, the defendants did not in fact dissolve or wind up, but continued the LLC as a *de facto* entity, so the limitations period was not triggered and could not create a “vested right” or expectation.

Third, the LLC and its members never actually relied on the LLC’s dissolution for a good-faith belief that they had escaped liability. Its members did not even know the LLC was dissolved. The LLC and its members continued to act as though the LLC had continuing existence, showing that they *did not* rely on its dissolution or the prior version of the Act for a reasonable belief that the LLC was not subject to suit.

Fourth, the LLC logically could not have had a “vested right” in expiration of a statute of limitations, for the simple reason that it did not exist when that right supposedly vested.

Fifth, because the LLC was terminated until June 10, 2010, and the period provided under former RCW 25.15.303 never expired, there is no issue here of “retroactive” application of the new limitations period. Application of the new period here is a *prospective* under *Unruh*.

Sixth, there is no “substantial injustice” in applying the new limitations period in this setting. As the sponsor of the Legislature’s original attempt at creating a survival provision to deal with fly-by-night developers commented:

Senator Brian Weinstein: “Well, it doesn’t make sense to me that an LLC could dissolve and just have its claims go into Never-Never Land, and *so if people were relying on it, they shouldn’t have been relying upon it because it’s almost fraudulent* in my opinion.

(See Appendix A, Transcript of House Judiciary Committee Hearing on SB 6531.) (Emphasis added).

The notion that a statute of limitations should not ordinarily be retroactively applied is based on the desire to protect legitimate expectations of security against stale claims, founded on clear law. Here, any such expectation was not real, was not legitimate, and was not based on clear law, and the claims are not in fact stale. The expectation was not real because defendants did not expect that they had avoided suit by dissolving their LLC, and the company never actually wound up. Any expectation was not legitimate because no provision was made for LLC obligations. Any expectation was not based on clear law, because the RCW 25.15.303 is arguably not a limitations period at all. And finally, there is no dispute that the claims at issue are otherwise timely.

The 2010 amendments and their legislative history show plainly that the Legislature considered survival of creditor remedies against dissolved LLCs, and requiring notice to creditors before extinguishing claims to be matters of signal importance that trump issues of corporate finality. Under these circumstances, the remedial will of the Legislature to

restore causes of action to creditors by making the limitations period only available when a certificate of dissolution has been filed, or proper notice of dissolution has first been given, militates strongly in favor of applying the 2010 amended limitations to claims against the LLC and its members in this case, irrespective of the general rule.

**3. There Are No Adverse Policy Consequences to Applying the 2010 Amendments to Previously-Cancelled LLCs.**

The LLC contends that the floodgates of litigation against legitimately dissolved LLCs will be opened by recognizing that it has continuing potential liability because it did not file a certificate of dissolution when it could have, and/or did not notify its creditors of its dissolution. The defense argument is mere hyperbole.

First, other limitations periods must be considered. The LLC Act was amended in 2010. Three years have passed since then. Thus any administratively dissolved LLC impacted by the change in its status from “cancelled” to merely “dissolved” is now 5 or more years from the accrual of claims against it, and all of these still have the procedures available to terminate potential claims by notice to creditors under RCW 25.15.298.

Second, the Legislature’s policy choice is clear: the rights of creditors trump the “expectations” of LLCs that they may go swiftly and secretly out of business, unbeknownst to creditors, before their obligations

are properly or at least openly addressed. As the sponsor of SB 6531 noted, any “expectation” on the part of improperly terminated LLCs is close enough to fraud as to make any lingering or marginal interest in finality unworthy of serious consideration.

**H. The Court Should Direct the Trial Court to Permit Plaintiff to Amend her Complaint to Conform to the Evidence, and State a Claim Against the LLC’s Members for Improper Winding Up by Failing to Make Reasonable Provision for Known Obligations to the LLC’s Only Creditor, and Failing to Reinstate the LLC During this Litigation.**

The court should also remand with instructions to allow plaintiff to amend her Complaint to conform to the evidence, and state a claim against Nichols and Shahan (as well as any other involved LLC members) personally for improper winding up of the LLC, based on their admitted failure to make reasonable provision for known LLC obligations.

**1. Bases for Member Liability**

According to *Chadwick Farms*, there are at least four potential bases for personal liability of an LLC member for the company’s obligations under the LLC Act itself: (1) personal torts, (2) constructively fraudulent distributions, (3) piercing the veil, and (4) improper winding up by failing to comply with RCW 25.15.300(2)’s directive to “pay or make reasonable provision for paying all claims and obligations known to the

company, including “contingent, conditional, or unmatured claims and obligations.”” *Chadwick Farms*, 166 Wn.2d at 200-201.

## **2. Nichols and Shahan Have Potential Winding Up Liability.**

Winding up liability has its roots in common law principals. When a corporate-type entity becomes insolvent or approaches insolvency, its officers and decision-makers take on a fiduciary duty to innocent creditors of the entity not to waste its assets. Thus, under the common law of Washington, “upon insolvency the corporate assets become a trust fund and corporate officers and directors owe the creditors a fiduciary duty to preserve and equitably distribute these assets. *Sterrett v. White Pine Sash Co.*, 176 Wash. 663, 30 P.2d 665 (1934); *Hein v. Forney*, 164 Wash. 309, 2 P.2d 741, 78 A.L.R. 631 (1931); *Thompson v. Huron Lumber Co.*, 4 Wash. 600, 30 P. 741 (1892).” *Block v. Olympic Health Spa*, 24 Wn.App. 938, 947, 604 P.2d 1317 (1979).

When Nichols and Shahan learned the LLC had inadvertently dissolved, they had a fiduciary obligation to the Houks (the LLC’s sole creditor) to preserve assets needed to address the LLC’s warranty obligations – particularly its insurance coverage and claims against responsible contractors. Nichols and Shahan violated that obligation by failing to reinstate the LLC while they had an opportunity to do so during

at least the initial 10 months of this litigation, and failing to assert claims against responsible contractors.<sup>13</sup>

Any suggestion that there was no known claim or obligation on the part of the LLC should, for summary judgment purposes, be rejected.

First, the verified Complaint and Janice Houk's affidavit both show that the LLC members in fact knew of the Houks' complaints about the home.

Second, under RCW 25.15.300(2), the question is not simply whether there is a "known claim," but whether there is a "known" "obligation" as well. Third, the LLC, as a developer of residences for sale, should be deemed to know the law applicable to it, and that it had an obligation to provide a home that complied with the warranty of habitability.

Nichols may also myopically focus on the term "claim," and insist that a "claim" be positively "asserted" before being considered fit for consideration in the winding up process. But such a contention would read out of the LLC Act the responsibility to make "reasonable provision" for "obligations" that amount to "unmatured claims," as specifically directed by RCW 25.15.300(2).

The evidence will show that by allowing their LLC to pass the reinstatement deadline without taking steps to preserve insurance and contractor claim assets, and without even contacting the sole remaining

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<sup>13</sup> Nichols and Shahan had 5 years from dissolution - until October 2, 2011, to reinstate the company. RCW 25.15.290(1).

potential creditor of the LLC, the LLC members violated the most basic standards and practices applicable to members undertaking to make reasonable provision for known obligations when winding up an LLC with trailing warranty obligations. Plaintiff should be permitted to present this evidence.

**3. Defendants Nichols and Shahan Also Have Potential Liability Under Corporate Disregard Theory.**

With limited exceptions, the factors and policies set forth in established case law applicable to piercing the veil of corporations applies also to deciding whether to pierce the veil of an LLC. RCW 25.15.060.

In *Morgan v. Burks*, 93 Wn.2d 580, 585, 611 P.2d 751 (1980), the Washington Supreme Court summarized the law relating to piercing the corporate veil:

The corporate entity is disregarded and liability assessed against shareholders in the corporation when the corporation has been intentionally used to violate or evade a duty owed to another....This may occur either because the liability-causing activity did not occur only for the benefit of the corporation, and the corporation and its controllers are thus "alter egos," see, e.g., *J.I. Case Credit Corp. v. Stark*, 64 Wn.2d 470, 392 P.2d 215 (1964); *W.G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 298 P.2d 1107 (1956); **or because the liable corporation has been "gutted" and left without funds by those controlling it in order to avoid actual or potential liability.**

(Emphasis added.) Thus, the stripping of assets alone from an LLC with trailing obligations to creditors supplies the evidence of intentional misuse

of the corporate form. The cases consider it form of constructive fraud, as explained in *Gall Landau Young Constr. Co. v. Hedreem*, 63 Wn.App. 91, 97, 816 P.2d 762 (1991) where the court noted that

Where the transfer of assets strips a debtor corporation of all its assets...thus leaving creditors and holders of claims no resources to which they may look for payment of their due, the net result is in legal effect a fraud; and the courts will subject the transferee to liability...

Subsequent cases interpreting *Morgan* hold that piercing the corporate veil requires two factors: (1) the corporate form must be intentionally used to violate or evade a duty and (2) disregard must be "necessary and required to prevent unjustified loss to the injured party." *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982) (quoting *Morgan*, 93 Wn.2d at 587).

The required elements of piercing the veil under the case law are all present here. Interpreted in the light most favorable to the plaintiff, the evidence shows: (1) The LLC members knew of warranty problems (2) The company was thereafter gutted and stripped of assets; (3) The members never checked with their one creditor about the status of the defect problems; (4) Nichols was presumably mailed the notice of dissolution by the Secretary of State, but allowed the company to expire anyway. As explained in *Morgan*, the mere "gutting" of the company despite warranty claims is adequate showing of intentional and unfair

evading of a duty by use of the corporate form. But on top of the gutting of the company, we here have the members' failure to renew it, their failure to inquire into warranty claims of the LLC's one creditor, and their failure to respond to known warranty complaints they did know about.

That piercing the veil to impose liability on LLC members is "necessary and required to prevent unjustified loss to the injured party," as set forth in *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982) seems beyond serious dispute. The members' failure to reinstate the LLC and assert claims against responsible subcontractors, and their apparent failure to recapture its distributed assets or secure its undistributed insurance assets in violation of their fiduciary duty all make the loss unjustified.

#### **4. The Putative Limitations Period Does Not Apply.**

The supposed limitations period of RCW 25.15.303 does not apply to these claims for wrongful winding up. Arguably, the members' failure to properly wind up did not occur until they knew the company was dissolved, which Nichols has testified was in the context of the current lawsuit, commenced in 2010. Thus the claim and wrongful conduct did not occur until *after* the supposed limitations period in RCW 25.15.303 expired in October of 2009, if defendants' argument is accepted. A limitations period may not be applied in such an absurd fashion as to bar

claims even before the culpable conduct has occurred and before a claim that has even accrued.<sup>14</sup>

If the court holds that the amendments to RCW 25.15.303 in 2010 are retroactive, the conundrum does not arise because the new limitations period has not even begun to run, since the LLC has not filed a certificate of dissolution. If the court holds that the amendments in 2010 are not retroactive, and the statute is construed as one of limitations, the absurdity of the result whereby a claim is barred by a limitations period that has expired before it has accrued is thrown into sharp relief. The best way to resolve the conundrum would then be to hold that the limitations period applies from the date of accrual of the claim, or to hold that it does not apply at all to wrongful winding up claims, where the conduct of the dissolution itself is at issue. See, e.g. *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 422, 125 S. Ct. 2444 (2005).

**I. The Court Should Refuse to Dismiss Claims Against Nichols Based On His Status as Seller of the Subject Property.**

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<sup>14</sup> See, e.g., *Sziber v. Stout*, 419 Mich. 514, 537-538, 358 N.W.2d 330 (1984) (“To hold that the statute of limitations governing the underlying tort action is applicable to the later action for contribution would mean that the statute of limitations governing the contribution actions expired in this case before the third-party plaintiffs’ claims accrued. We cannot suppose that the Legislature intended such an absurd result.”)

Summary dismissal of claims against Nichols would have been improper for the further reason that Nichols signed the REPSA in his own behalf or on behalf of the LLC as an undisclosed principal, and that the involvement of the LLC was unknown to plaintiff. Accordingly, the court should allow plaintiff to conform her complaint to the evidence to state a claim of personal liability on this basis under *Dana v. Boren*, 133 Wn.App. 307, 311, 135 P.3d 963 (2006) (citing *Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 706, 756 P.2d 717 (1988)), and *Matsko v. Dally*, 49 Wn.2d 370, 374-5, 301 P.2d 1074 (1956).

**J. Neither the LLC Nor Nichols Are Entitled to an Award of Fees, Even if Either Were to Prevail.**

The REPSA provides for an award of fees to “Buyer, Seller, or any real estate licensee or broker” “in any dispute relating to this transaction or this Agreement.” (CP 97).

Defendants fail to cite controlling authority in support of their request for fees based on the REPSA provision.<sup>15</sup> Nevertheless, plaintiff

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<sup>15</sup> The authority defendants cite for award of fees based on the RESPA language is the unpublished Division III opinion of *Davey v. Windermere Services Co.*, which they incorrectly cite as 172 Wn.App. 1011 (2012). (The opinion, being unreported, in fact appears at 2012 Wash..App. LEXIS 2764 (Div. III, 2012)).

Under GR 14.1(a), “A party may not cite as an authority an unpublished opinion of the Court of Appeals.” “[U]npublished opinions have no precedential value and should not be cited or relied upon in any manner.” *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, review denied, 144 Wn.2d 1021 (2001), cert. denied, 535 U.S. 980 (2002). “No matter how well reasoned, unpublished opinions of this court lack precedential value...” *State v. Nysta*, 168 Wn. App. 30, 44, 275 P.3d 1162 (2012). The Supreme Court has noted that “Like the Court of Appeals, we have disapproved

agrees that theoretically, *as among the actual parties to the REPSA*, an award of prevailing party fees would be appropriate in a warranty of habitability action.

By statute, attorney fees are awarded to the prevailing party in an action on a contract that specifically provides for attorney fees and costs incurred to enforce its provisions. RCW 4.84.330.

The warranty of habitability exists independently of any express terms of the contract for sale. It arises by implication from the sale transaction itself. *Stuart v. Coldwell Banker Commercial Group, Inc.*, 109 Wn.2d 406, 417, 745 P.2d 1284 (1987); *House v. Thornton*, 76 Wn.2d 428, 436, 457 P.2d 199 (1969). But the implied warranty of habitability is an implied-in-law term of the contract for sale for the purposes of attorney fees. *Brickler v. Myers Constr., Inc.*, 92 Wn. App. 269, 275, 966 P.2d 335 (1998).

Here, the purchase and sale agreement provides for attorney fees to the prevailing party in any dispute arising from the sale, including an implied warranty claim.

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citing unpublished decisions.” *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 248, 178 P.3d 981 (2008) (citations omitted).

As noted in *State v. Sigman*, 118 Wn.2d 442, 444, 826 P.2d 144 (1992), violation of the rule is “a serious matter...” Division II has commented, “we note with displeasure that Allstate ignored our long-standing prohibition against citing unpublished opinions, and we strongly admonish Allstate to cease this practice...” *Johnson v. Allstate Ins. Co.*, 126 Wn.App. 510, 519, 108 P.3d 1273 (2005).

Sanctions are regularly imposed for this type of violation. See *Dwyer v. J.I. Kislak Mortgage*, 103 Wn.App. 542, 548, 13 P.3d 240 (2000) (Imposing \$500 sanction), *Skamania County v. Woodall*, 104 Wn.App. at 536, n.11 (Same) and *Brooks Trust A v. Pac. Media LLC*, 111 Wn.App. 393, 401, 44 P.3d 938 (2002) (Imposing \$100 sanction for *de minimus* violation).

On the merits, the *Davey* case probably would not be controlling, even if it were precedential. The issue was a suit based on a real estate agent’s allegedly false representation to sellers of a home that the buyers had signed and delivered an acceptance of a RESPA by the acceptance date. This is quite obviously a dispute relating to the “transaction” or the “Agreement,” rather than one relating to quality of the home itself.

*Burbo v. Harley C. Douglass, Inc.*, 125 Wn.App. 684, 701-702, 106 P.3d 258 (2005).<sup>16</sup>

However, an award of fees to Nichols or the LLC would be improper here, even if either were to prevail, for three reasons.

First, Nichols cannot be heard to claim that he is a party to the REPSA. He has averred that he did not sell the home, that the LLC did so. Accordingly, Nichols may not be heard to demand an award of prevailing party fees on the basis of being a “Seller” under the REPSA, to which he claims he was not personally a party in any way. (CP 113, 178). The adoption of these inconsistent and irreconcilable positions should in this setting be barred by the doctrine of judicial estoppel. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007).

Second, while the LLC undeniably built and transferred the residence to the Houks, there is (at a minimum) a material issue of fact as to whether either the LLC or Nichols qualify as a “Seller” under the REPSA who would be entitled to an award of prevailing party fees. The “Seller” is identified repeatedly in the REPSA as “Joe Nichols.” (CP 154, 159, 160, 161). However, Nichols denies that status, and the REPSA is

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<sup>16</sup> Plaintiff further notes that under *Alejandre v. Bull*, 159 Wn.2d 674, 691, 153 P.3d 864 (2007), a cause of action for negligently misrepresenting the condition of a septic system was sufficiently related to the “transaction” to warrant an award of prevailing party fees.

signed by Nichols with a notation following his name which appears to read “N-H Manager, LLC.” (CP 158, 159, 162). Significantly, the name of the defendant “Nichols and Shahan Developments LLC” never appears in the REPSA at all!<sup>17</sup>

Third, if the LLC were to prevail on any basis that includes the conclusion that it was not restored to legal existence by the 2010 amendments to the LLC Act, then the LLC cannot be awarded fees because it does not exist. RAP 18.1 requires that “applicable law grants to a party the right to recover reasonable attorney fees or expenses” before such an award may be made. But under *Chadwick Farms* and the prior version of the LLC Act, “legal existence of a limited liability company ends upon cancellation of the certificate of formation. Thus, a limited liability company’s ability to sue ends upon cancellation.” *Chadwick Farms*, 166 Wn.2d at 199. Accordingly, the LLC would be unable to assert a claim for relief, could not collect fees, and could not maintain an action to enforce any award of fees that might be made.

#### IV. CONCLUSION

Former RCW 25.15.303 was enacted as a survival or anti-abatement provision in the aftermath of *Ballard Square*. The Supreme

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<sup>17</sup> If the LLC is awarded fees as an undisclosed principal of Nichols who is entitled to enforce the REPSA, then the court should (and logically must) also hold that Nichols is jointly and severally liable with the for any LLC breach of warranty obligations under the rule in *Dana*, 133 Wn.App. at 311.

Court's *dicta* statement in *Chadwick Farms*, and Division I's conclusion in *Sorreno* that former RCW 25.15.303 also operated as a limitation of claims is not warranted by the actual language of the statute, which never stated what happens when more than three years passes from dissolution without commencement of a suit. The Legislature may have intended that after three years passes, claims could abate if the law so provides. The conclusion that former RCW 25.15.303 is a limitations period is based purely on negative implication or inference. Given the statute's lack of clarity, which is uncharacteristic of limitations statutes in Washington, and the Legislature's intention to enact a survival provision, former RCW 25.15.303 should be construed solely as a survival provision, not a limitation on actions.

Even if former RCW 25.15.303 is construed as a limitations period, defendants have not demonstrated that it was triggered by dissolution of the LLC, because the record contains no evidence clearly establishing notice of commencement of a dissolution proceeding or a date of administrative dissolution, but present only an ambiguous document that does not even refer to the governing law.

Setting these threshold problems aside, defendants are barred from raising the dissolution of the LLC as a trigger of the limitations period because the LLC continued to act as a subsisting, *de facto* limited liability

company by engaging in new business, and never winding up or making reasonable provision for its known obligations.

Even if the LLC did dissolve, its termination two years later tolled the limitations period until its reinstatement in June of 2010, at which point more than a year remained on the limitations period. This action was timely commenced within a year of the LLC's restored legal status, even assuming that former RCW 25.15.303 continued to apply.

The 2010 amendments to the LLC Act that change the period of legal existence of an LLC are intended to restore remedies from procedural impediments, and are presumptively retroactive. Likewise in this particular case the amendments establishing prerequisites for invoking the putative limitation of claims in RCW 25.15.303 are remedial. The LLC never had any actual or legitimate expectation that it had been saved from stale claims by virtue of its dissolution, and never in fact carried out a winding up which would justify such an expectation. Accordingly, in this setting the LLC had no "vested right" in the limitations period, and the remedial enactment of 2010 should be enforced.

The court should affirm the denial of summary judgment, and remand with instructions to allow plaintiff to amend her complaint to state claims against Nichols and others for improper winding up by failing to reinstate the LLC while he could after commencement of this litigation,

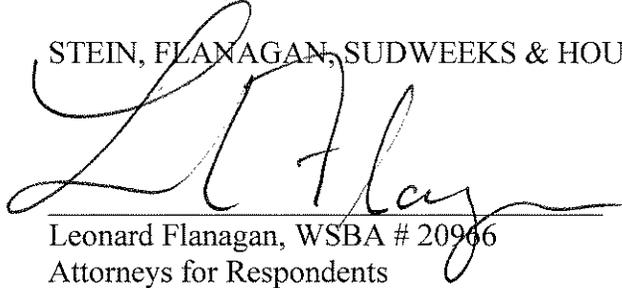
and failing to make reasonable provision for known obligations of the LLC to its one and only creditor. Plaintiff should be permitted to amend her complaint to state claims against Nichols and others for piercing the LLC veil by virtue of the members having “guttled” the LLC in failing to preserve its assets, including subcontractor and insurance claims. These claims of personal liability cannot be subject to RCW 25.15.303, for the reason that they accrued after its putative limitations period expired, and the statute presupposes a dissolution and winding up process that never in fact occurred.

The court should deny Nichols’ and the LLC’s request for attorney fees, even if one prevails. Nichols denies that he is a Seller under the REPSA, and cannot at the same time be heard to demand attorney fees on the basis that he *is* the Seller under the REPSA. For its part, the LLC’s name is never once mentioned in the REPSA, so it is not entitled to relief under it as a “Seller.” If it is entitled to such relief as an undisclosed principal, then Nichols should be held jointly and severally liable for any LLC liability for breach of warranty obligation as the agent of an undisclosed principal, under established Washington law. Moreover, if the LLC were to prevail on any grounds that include the determination that it was *not* restored to legal existence with the 2010 amendments to the

LLC Act, then it should be denied fees because it has no legal existence and cannot maintain such a claim under *Chadwick Farms*.

DATED this 15<sup>th</sup> day of August, 2013

STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC



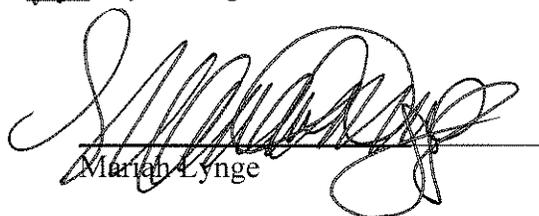
Leonard Flanagan, WSBA # 20966  
Attorneys for Respondents

This is to certify that on the 15<sup>th</sup> day of August, 2013, I did cause to be served true and correct copies of the foregoing document to be delivered to the following by the method(s) as indicated:

<p><b><u>Counsel for Petitioners Nichols &amp; Shahan Developments, LLC and Joseph K. Nichols</u></b>          Ross P. White, WSBA # 12136          Michael J. Kapaun, WSBA # 36864          WITHERSPOON, KELLEY, DAVENPORT &amp; TOOLE, P.S.          422 West Riverside Avenue, Suite 1100          Spokane, Washington 99201</p>	<p><input checked="" type="checkbox"/> via US Mail  <input type="checkbox"/> via Hand Delivery  <input type="checkbox"/> via E-Mail</p>
<p><b><u>Attorneys Lance Pounder Excavating, Inc</u></b>          Greg Jones          FALLON &amp; MCKINLEY, PLLC          1111 Third Avenue, Suite 2400          Seattle, WA 98101</p>	<p><input checked="" type="checkbox"/> via US Mail  <input type="checkbox"/> via Hand Delivery  <input type="checkbox"/> via E-Mail</p>
<p><b><u>Pro-Se</u></b>          Burt Shahan          d/b/a Best Development &amp; Construction          1870 Corwin Road          Bullhead City, AZ 86442-8774</p>	<p><input checked="" type="checkbox"/> via US Mail  <input type="checkbox"/> via Hand Delivery  <input type="checkbox"/> via E-Mail</p>
<p><b><u>Pro-Se</u></b>          Randy and Naomi Lee Stark          R.K. Stark Construction Co.          15519 E. Kahlua Lane          Mica, WA 99023-9649</p>	<p><input checked="" type="checkbox"/> via US Mail  <input type="checkbox"/> via Hand Delivery  <input type="checkbox"/> via E-Mail</p>

I certify under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 15<sup>th</sup> day of August, 2013 at Seattle, Washington.

  
 Mariah Lynge

# APPENDIX A

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6531**

59th Legislature  
2006 Regular Session

Passed by the Senate February 11, 2006  
YEAS 41 NAYS 0

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**President of the Senate**

Passed by the House February 28, 2006  
YEAS 97 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6531** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SENATE BILL 6531**

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Passed Legislature - 2006 Regular Session

**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senators Weinstein, Fraser and Kline

Read first time 01/13/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to preserving remedies when limited liability  
2 companies dissolve; and adding a new section to chapter 25.15 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 25.15 RCW  
5 under Article VIII to read as follows:

6 The dissolution of a limited liability company does not take away  
7 or impair any remedy available against that limited liability company,  
8 its managers, or its members for any right or claim existing, or any  
9 liability incurred at any time, whether prior to or after dissolution,  
10 unless an action or other proceeding thereon is not commenced within  
11 three years after the effective date of dissolution. Such an action or  
12 proceeding against the limited liability company may be defended by the  
13 limited liability company in its own name.

--- END ---

# SENATE BILL REPORT

## SB 6531

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As Passed Senate, February 11, 2006

**Title:** An act relating to preserving remedies when limited liability companies dissolve.

**Brief Description:** Preserving remedies when limited liability companies dissolve.

**Sponsors:** Senators Weinstein, Fraser and Kline.

**Brief History:**

**Committee Activity:** Judiciary: 1/18/06, 1/31/06 [DP]

Passed Senate: 2/11/06, 41-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

**Staff:** Cindy Fazio (786-7405)

**Background:** When a limited liability company (LLC) dissolves, it must pay, or make reasonable provisions to pay, all claims and obligations known to the limited liability company, whether or not the identity of the claimant is known. If there are insufficient assets, the claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available.

**Summary of Bill:** When a LLC dissolves, an action for claims or rights against it must be commenced within three years after the effective date of dissolution in order to survive. This includes claims or rights, or liability incurred, prior to, or after, dissolution.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Washington State Bar Association could not do a comprehensive review of the limited liability statute for this session, but this one small change should provide important relief in the short term pending that review. This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith. The survival question can only be answered in court without this change. The bill will not add costs to the price of houses. The change is reasonable and will avoid dramatic, unintended consequences.

**Testimony Against:** None.

**Who Testified:** PRO: Senator Brian Weinstein, Prime Sponsor; Michelle Ein, Washington Homeowner's Coalition; Ken Harer, Red Oaks Condominiums.

# HOUSE BILL REPORT

## SB 6531

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**As Passed House:**

February 28, 2006

**Title:** An act relating to preserving remedies when limited liability companies dissolve.

**Brief Description:** Preserving remedies when limited liability companies dissolve.

**Sponsors:** By Senators Weinstein, Fraser and Kline.

**Brief History:**

**Committee Activity:**

Judiciary: 2/20/06 [DP].

**Floor Activity:**

Passed House: 2/28/06, 97-0.

**Brief Summary of Bill**

- Provides a three year period following dissolution of a limited liability company during which the dissolution of the company does not extinguish any cause of action against the company.

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**HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Springer and Wood.

**Staff:** Bill Perry (786-7123).

**Background:**

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

**Attributes of Corporations and LLCs**

Corporations are creatures of statutory law and are created only by compliance with prescribed formal procedures. A corporation is managed by directors and officers, but is owned by shareholders who may have very little direct role in management. Generally, ownership shares are transferable, and each shareholder is liable for corporate debts only to the extent of his or her own investment in the corporation. A corporation is treated as a taxable entity.

General partnerships, on the other hand, are business entities recognized as common law that require no formal creation, and are owned and managed by the same individuals who are each liable for the debts of the partnership. A general partnership is not a taxable entity.

The LLCs were authorized by the Legislature in 1994. An LLC is a noncorporate entity that allows the owners to participate actively in management, but at the same time provides them with limited liability. The Internal Revenue Service has ruled that an LLC with attributes that make it more like a partnership than a corporation may be treated as a non-taxable entity.

A properly constructed LLC, then, can be a business entity in which the ownership enjoys the limited liability of a corporation's shareholders, but the entity itself is not taxed as a corporation.

### **Dissolution of an LLC**

LLCs may be dissolved in a number of ways, including:

- reaching a dissolution date set at the time the LLC was created;
- the occurrence of events specified in the LLC agreement as causing dissolution;
- by mutual consent of all members of the LLC;
- the dissociation of all members through death, removal or other event;
- judicial action to dissolve the LLC; or
- administrative action by the Secretary of State for failure of the LLC to pay fees or to complete required reports.

### **Certificate of Cancellation**

After an LLC is dissolved, or if an LLC has been merged with another entity and the new entity is not the LLC, the certificate of formation that created the LLC is cancelled.

Cancellation may occur in a number of ways:

- The certificate of formation may authorize a member or members to file the certificate of cancellation upon dissolution, or after a period of winding up the business of the LLC.
- A court may order the filing of a certificate of cancellation.
- In the case of a merger that results in a new entity that is not the LLC, the filing of merger documents must include the filing of a certificate of cancellation.
- In the case of an administrative dissolution of an LLC, there is a two year period during which the LLC may be reinstated before the secretary of state files the certificate of cancellation.

After dissolution of an LLC, but before cancellation of the certificate of formation, members of the LLC or a court appointed receiver may wind up the business of the LLC. A person winding up the affairs of an LLC may prosecute or defend legal actions in the name of the LLC.

### **Preservation of Remedies**

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the

LLC. However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years after dissolution. There is no "certificate of cancellation" necessary to end a corporation. *(Note: Another currently pending bill, SSB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after dissolution.)*

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**Summary of Bill:**

Dissolution of a limited liability company will not eliminate any cause of action against the company that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of the dissolution.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation. The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners' warranty claims, will survive the dissolution of an LLC. Whether or not there are any assets left to satisfy a claim is a separate problem that will have to be addressed later.

**Testimony Against:** None.

**Persons Testifying:** Senator Weinstein, prime sponsor; Alfred Donohue, Forsberg Umlauf, P.S.; and Sandi Swarthout and Michelle Ein, Washington Homeowners Coalition.

**Persons Signed In To Testify But Not Testifying:** None.

House Judiciary Committee hearings, 2/20/06

Staff Report:

“Senate Bill 6531 deals with the dissolution of limited liability corporations and the survival of claims against an LLC following its dissolution. LLCs are something of a hybrid between corporations and general partnerships. It’s possible to create an LLC in which, unlike the partners of a general partnership, the members of an LLC are insulated from liability in much the same way as shareholders of a corporation are insulated from liability beyond the amount of their own shares in the corporation. And at the same time, unlike a corporation, the LLC is a pass-through entity for tax purposes, and in that regard is treated like a general partnership. Like a corporation, an LLC is strictly a creature of statute, and it’s created and dissolved in accordance with prescribed methods in the RCWs.

“This bill deals with the dissolution of an LLC, and that can occur in any number of ways, including reaching the dissolution date that’s been set in the certificate of formation of an LLC, or the happening of some events that are listed in the certificate of formation that would cause the dissolution, or by the mutual consent of all the members of the LLC, or by the dissociation of all the members through death or bankruptcy or some other disability, by judicial action, or by administrative action.

“There’s no express provision in the LLC law dealing with the survival of claims after dissolution. So this is one of the issues that was dealt with with regard to corporations that you just heard about, and what the bill does is provide a three year period during which the dissolution of an LLC does not in any way diminish a remedy for a claim that was filed before or after the dissolution.

“And I’d be glad to answer any questions.”

....

Senator Brian Weinstein:

“The reason I’m here, I guess I’ll do what Senator Brandland did, the reason I’m here is that I heard this *Ballard Square* decision that the last witness, John Steel talked about, from the Bar, this was a decision involving a corporation that dissolved and there were claims against it, and once a corporation dissolves it no longer exists, so you couldn’t sue it. And there was no survival period. I knew that that was a problem for both corporations and LLCs, and as a matter of fact I contacted Gale Stone from the Bar and she put me in touch with John Steel and it turned out that the Bar was working on the Bill that you just heard previous to this. Now I thought, “That’s great, we need that.”

“And I talked to John Steel a little bit and gave him my input on that bill, and when you asked if there was any controversy in the Senate, I think what he was alluding to was that

he worked the entire issue before he brought the bill, because there was no controversy in the Senate on that bill or this bill.

“So what happened was that I spoke to John and Gale Stone and found out that the Bar did put together this comprehensive bill that had to do with corporations. When I asked him, well why don’t you just do it for LLCs as well, he said “Well, that’s a whole different department; we are working on that, but that’s going to be a couple of years.” So I thought well in the meantime, we should take care of this little problem of allowing a three year window in order to sue an LLC that if they dissolved. So I ran the language by the Bar Association, I worked with them, they said this is fine for the meantime, we have no problem with it, it’s well-worded, and they put their blessing on it, and so I ran the bill, and here’s where we are, it passed the Senate unanimously, and I guess I can answer any questions, too.

....

Chairwoman Pat Lance:

“But I imagine it does have some interesting consequences for those who might have relied on there not being this three year window, which is the reason why you’re here with the Bill...So um...

Senator Brian Weinstein:

“Well, it doesn’t make sense to me that an LLC could dissolve and just have its claims go into Never-Never Land, and so if people were relying on it, they shouldn’t have been relying upon it because it’s almost fraudulent in my opinion. And that’s what the Bar saw fit to do, at least with the Corporations statute.

Representative Jay Rodne:

“Thank you Madame Chair, and thank you, Senator for coming before the Committee. I applaud what you’re trying to do in this bill, and you know a lot of these particular LLC cases involve the construction industry, where an entity will form, for one project, and then quickly wind down after the project is – is concluded, but, you know, what requirement does that winding down LLC have to maintain any kind of insurable interest or bond for the three year duration? I mean, are we creating a right without any means of a realistic remedy?

Senator Brian Weinstein:

“Well, this is not a perfect bill, and it certainly doesn’t afford a claimant a great remedy, but if the LLC actually had a bond, or actually was insured, without this bill that insurance is worthless to the claimant, the bond is worthless to the claimant. If you pass this bill, at least the claimant can go after the bond or the insurance. That’s all they can do at this point. I mean, that’s all they will be able to do after this bill passes, if it does

pass of course. But, right now, the claimant could be left with a situation where they could, let's say an LLC could have done faulty work on their home or something, and dissolved, and they could be an insured LLC, they could have a bond, but since they dissolved, they are no longer recognized as a legal entity, so you can't sue and go after the bond or the insurance. I know certain states, I practiced a little bit in Louisiana, Louisiana did have a direct action statute where you can go against an insurance company, but Washington doesn't, so..."

# APPENDIX B

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2657**

61st Legislature  
2010 Regular Session

Passed by the House March 6, 2010  
Yeas 95 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 2, 2010  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2657** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2657**

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AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Judiciary (originally sponsored by Representative Pedersen)

READ FIRST TIME 02/03/10.

1            AN ACT Relating to the dissolution of limited liability companies;  
2 amending RCW 25.15.005, 25.15.070, 25.15.085, 25.15.095, 25.15.270,  
3 25.15.290, 25.15.293, 25.15.295, 25.15.303, 25.15.340, and 25.15.805;  
4 adding new sections to chapter 25.15 RCW; and repealing RCW 25.15.080.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 25.15.005 and 2008 c 198 s 4 are each amended to read  
7 as follows:

8            The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10            (1) "Certificate of formation" means the certificate referred to in  
11 RCW 25.15.070, and the certificate as amended.

12            (2) "Event of dissociation" means an event that causes a person to  
13 cease to be a member as provided in RCW 25.15.130.

14            (3) "Foreign limited liability company" means an entity that is  
15 formed under:

16            (a) The limited liability company laws of any state other than this  
17 state; or

18            (b) The laws of any foreign country that is: (i) An unincorporated  
19 association, (ii) formed under a statute pursuant to which an

1 association may be formed that affords to each of its members limited  
2 liability with respect to the liabilities of the entity, and (iii) not  
3 required, in order to transact business or conduct affairs in this  
4 state, to be registered or qualified under Title 23B or 24 RCW, or any  
5 other chapter of the Revised Code of Washington authorizing the  
6 formation of a domestic entity and the registration or qualification in  
7 this state of similar entities formed under the laws of a jurisdiction  
8 other than this state.

9 (4) "Limited liability company" and "domestic limited liability  
10 company" means a limited liability company having one or more members  
11 that is organized and existing under this chapter.

12 (5) "Limited liability company agreement" means any written  
13 agreement of the members, or any written statement of the sole member,  
14 as to the affairs of a limited liability company and the conduct of its  
15 business which is binding upon the member or members.

16 (6) "Limited liability company interest" means a member's share of  
17 the profits and losses of a limited liability company and a member's  
18 right to receive distributions of the limited liability company's  
19 assets.

20 (7) "Manager" or "managers" means, with respect to a limited  
21 liability company that has set forth in its certificate of formation  
22 that it is to be managed by managers, the person, or persons designated  
23 in accordance with RCW 25.15.150(2).

24 (8) "Member" means a person who has been admitted to a limited  
25 liability company as a member as provided in RCW 25.15.115 and who has  
26 not been dissociated from the limited liability company.

27 (9) "Person" means an individual, corporation, business trust,  
28 estate, trust, partnership, limited liability company, association,  
29 joint venture, government, governmental subdivision, agency, or  
30 instrumentality, or a separate legal entity comprised of two or more of  
31 these entities, or any other legal or commercial entity.

32 (10) "Professional limited liability company" means a limited  
33 liability company which is organized for the purpose of rendering  
34 professional service and whose certificate of formation sets forth that  
35 it is a professional limited liability company subject to RCW  
36 25.15.045.

37 (11) "Professional service" means the same as defined under RCW  
38 18.100.030.

1       (12) "Record" means information that is inscribed on a tangible  
2 medium or that is stored in an electronic or other medium and is  
3 retrievable in perceivable form.

4       (13) "State" means the District of Columbia or the Commonwealth of  
5 Puerto Rico or any state, territory, possession, or other jurisdiction  
6 of the United States other than the state of Washington.

7       **Sec. 2.** RCW 25.15.070 and 1994 c 211 s 201 are each amended to  
8 read as follows:

9       (1) In order to form a limited liability company, one or more  
10 persons must execute a certificate of formation. The certificate of  
11 formation shall be filed in the office of the secretary of state and  
12 set forth:

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

14       (b) The address of the registered office and the name and address  
15 of the registered agent for service of process required to be  
16 maintained by RCW 25.15.020;

17       (c) The address of the principal place of business of the limited  
18 liability company;

19       (d) If the limited liability company is to have a specific date of  
20 dissolution, the latest date on which the limited liability company is  
21 to dissolve;

22       (e) If management of the limited liability company is vested in a  
23 manager or managers, a statement to that effect;

24       (f) Any other matters the members decide to include therein; and

25       (g) The name and address of each person executing the certificate  
26 of formation.

27       (2) Effect of filing:

28       (a) Unless a delayed effective date is specified, a limited  
29 liability company is formed when its certificate of formation is filed  
30 by the secretary of state. A delayed effective date for a certificate  
31 of formation may be no later than the ninetieth day after the date it  
32 is filed.

33       (b) The secretary of state's filing of the certificate of formation  
34 is conclusive proof that the persons executing the certificate  
35 satisfied all conditions precedent to the formation (~~(except in a~~  
36 ~~proceeding by the state to cancel the certificate)).~~

1 (c) A limited liability company formed under this chapter shall be  
2 a separate legal entity(~~(, the existence of which as a separate legal~~  
3 ~~entity shall continue until cancellation of the limited liability~~  
4 ~~company's certificate of formation)~~).

5 **Sec. 3.** RCW 25.15.085 and 2002 c 74 s 17 are each amended to read  
6 as follows:

7 (1) Each document required by this chapter to be filed in the  
8 office of the secretary of state shall be executed in the following  
9 manner, or in compliance with the rules established to facilitate  
10 electronic filing under RCW 25.15.007, except as set forth in RCW  
11 25.15.105(4)(b):

12 (a) Each original certificate of formation must be signed by the  
13 person or persons forming the limited liability company;

14 (b) A reservation of name may be signed by any person;

15 (c) A transfer of reservation of name must be signed by, or on  
16 behalf of, the applicant for the reserved name;

17 (d) A registration of name must be signed by any member or manager  
18 of the foreign limited liability company;

19 (e) A certificate of amendment or restatement must be signed by at  
20 least one manager, or by a member if management of the limited  
21 liability company is reserved to the members;

22 (f) A certificate of (~~cancellation~~) dissolution must be signed by  
23 the person or persons authorized to wind up the limited liability  
24 company's affairs pursuant to RCW 25.15.295(~~(+1+)~~) (3);

25 (g) If a surviving domestic limited liability company is filing  
26 articles of merger, the articles of merger must be signed by at least  
27 one manager, or by a member if management of the limited liability  
28 company is reserved to the members, or if the articles of merger are  
29 being filed by a surviving foreign limited liability company, limited  
30 partnership, or corporation, the articles of merger must be signed by  
31 a person authorized by such foreign limited liability company, limited  
32 partnership, or corporation; and

33 (h) A foreign limited liability company's application for  
34 registration as a foreign limited liability company doing business  
35 within the state must be signed by any member or manager of the foreign  
36 limited liability company.

1 (2) Any person may sign a certificate, articles of merger, limited  
2 liability company agreement, or other document by an attorney-in-fact  
3 or other person acting in a valid representative capacity, so long as  
4 each document signed in such manner identifies the capacity in which  
5 the signator signed.

6 (3) The person executing the document shall sign it and state  
7 beneath or opposite the signature the name of the person and capacity  
8 in which the person signs. The document must be typewritten or  
9 printed, and must meet such legibility or other standards as may be  
10 prescribed by the secretary of state.

11 (4) The execution of a certificate or articles of merger by any  
12 person constitutes an affirmation under the penalties of perjury that  
13 the facts stated therein are true.

14 **Sec. 4.** RCW 25.15.095 and 2002 c 74 s 18 are each amended to read  
15 as follows:

16 (1) The original signed copy, together with a duplicate copy that  
17 may be either a signed, photocopied, or conformed copy, of the  
18 certificate of formation or any other document required to be filed  
19 pursuant to this chapter, except as set forth under RCW 25.15.105 or  
20 unless a duplicate is not required under rules adopted under RCW  
21 25.15.007, shall be delivered to the secretary of state. If the  
22 secretary of state determines that the documents conform to the filing  
23 provisions of this chapter, he or she shall, when all required filing  
24 fees have been paid:

25 (a) Endorse on each signed original and duplicate copy the word  
26 "filed" and the date of its acceptance for filing;

27 (b) Retain the signed original in the secretary of state's files;  
28 and

29 (c) Return the duplicate copy to the person who filed it or the  
30 person's representative.

31 (2) If the secretary of state is unable to make the determination  
32 required for filing by subsection (1) of this section at the time any  
33 documents are delivered for filing, the documents are deemed to have  
34 been filed at the time of delivery if the secretary of state  
35 subsequently determines that:

36 (a) The documents as delivered conform to the filing provisions of  
37 this chapter; or

1 (b) Within twenty days after notification of nonconformance is  
2 given by the secretary of state to the person who delivered the  
3 documents for filing or the person's representative, the documents are  
4 brought into conformance.

5 (3) If the filing and determination requirements of this chapter  
6 are not satisfied completely within the time prescribed in subsection  
7 (2)(b) of this section, the documents shall not be filed.

8 (4) Upon the filing of a certificate of amendment (or judicial  
9 decree of amendment) or restated certificate in the office of the  
10 secretary of state, or upon the future effective date or time of a  
11 certificate of amendment (or judicial decree thereof) or restated  
12 certificate, as provided for therein, the certificate of formation  
13 shall be amended or restated as set forth therein. (~~Upon the filing  
14 of a certificate of cancellation (or a judicial decree thereof), or  
15 articles of merger which act as a certificate of cancellation, or upon  
16 the future effective date or time of a certificate of cancellation (or  
17 a judicial decree thereof) or of articles of merger which act as a  
18 certificate of cancellation, as provided for therein, or as specified  
19 in RCW 25.15.290, the certificate of formation is canceled.~~)

20 **Sec. 5.** RCW 25.15.270 and 2009 c 437 s 1 are each amended to read  
21 as follows:

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

24 (1)(a) The dissolution date, if any, specified in the certificate  
25 of formation. If a dissolution date is not specified in the  
26 certificate of formation, the limited liability company's existence  
27 will continue until the first to occur of the events described in  
28 subsections (2) through (6) of this section. If a dissolution date is  
29 specified in the certificate of formation, the certificate of formation  
30 may be amended and the existence of the limited liability company may  
31 be extended by vote of all the members.

32 (b) This subsection does not apply to a limited liability company  
33 formed under RCW 30.08.025 or 32.08.025;

34 (2) The happening of events specified in a limited liability  
35 company agreement;

36 (3) The written consent of all members;

1 (4) Unless the limited liability company agreement provides  
2 otherwise, ninety days following an event of dissociation of the last  
3 remaining member, unless those having the rights of assignees in the  
4 limited liability company under RCW 25.15.130(1) have, by the ninetieth  
5 day, voted to admit one or more members, voting as though they were  
6 members, and in the manner set forth in RCW 25.15.120(1);

7 (5) The entry of a decree of judicial dissolution under RCW  
8 25.15.275; or

9 (6) The ~~((expiration of five years after the effective date of  
10 dissolution under RCW 25.15.285 without the reinstatement))~~  
11 administrative dissolution of the limited liability company by the  
12 secretary of state under RCW 25.15.285(2), unless the limited liability  
13 company is reinstated by the secretary of state under RCW 25.15.290.

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 25.15 RCW  
15 to read as follows:

16 (1) After dissolution occurs under RCW 25.15.270, the limited  
17 liability company may deliver to the secretary of state for filing a  
18 certificate of dissolution signed in accordance with RCW 25.15.085.

19 (2) A certificate of dissolution filed under subsection (1) of this  
20 section must set forth:

21 (a) The name of the limited liability company; and

22 (b) A statement that the limited liability company is dissolved  
23 under RCW 25.15.270.

24 **Sec. 7.** RCW 25.15.290 and 2009 c 437 s 2 are each amended to read  
25 as follows:

26 (1) A limited liability company that has been administratively  
27 dissolved under RCW 25.15.285 may apply to the secretary of state for  
28 reinstatement within five years after the effective date of  
29 dissolution. The application must be delivered to the secretary of  
30 state for filing and state:

31 (a) ~~((Recite))~~ The name of the limited liability company and the  
32 effective date of its administrative dissolution;

33 (b) ~~((State))~~ That the ground or grounds for dissolution either did  
34 not exist or have been eliminated; and

35 (c) ~~((State))~~ That the limited liability company's name satisfies  
36 the requirements of RCW 25.15.010.

1 (2) If the secretary of state determines that ~~((the))~~ an  
2 application contains the information required by subsection (1) of this  
3 section and that the name is available, the secretary of state shall  
4 reinstate the limited liability company and give the limited liability  
5 company written notice, as provided in RCW 25.15.285(1), of the  
6 reinstatement that recites the effective date of reinstatement. If the  
7 name is not available, the limited liability company must file with its  
8 application for reinstatement an amendment to its certificate of  
9 formation reflecting a change of name.

10 (3) When ~~((the))~~ reinstatement ~~((is))~~ becomes effective, it relates  
11 back to and takes effect as of the effective date of the administrative  
12 dissolution and the limited liability company may resume carrying on  
13 its ~~((business))~~ activities as if the administrative dissolution had  
14 never occurred.

15 ~~((4) If an application for reinstatement is not made within the  
16 five-year period set forth in subsection (1) of this section, or if the  
17 application made within this period is not granted, the limited  
18 liability company's certificate of formation is deemed canceled.))~~

19 **Sec. 8.** RCW 25.15.293 and 2009 c 437 s 3 are each amended to read  
20 as follows:

21 (1) A limited liability company ~~((voluntarily))~~ dissolved under RCW  
22 25.15.270 (2) or (3) that has filed a certificate of dissolution under  
23 section 6 of this act may ~~((apply to the secretary of state for~~  
24 ~~reinstatement))~~ revoke its dissolution within one hundred twenty days  
25 ~~((after the effective date))~~ of filing its certificate of dissolution.  
26 ~~((The application must:~~

27 ~~(a) Recite the name of the limited liability company and the~~  
28 ~~effective date of its voluntary dissolution;~~

29 ~~(b) State that the ground or grounds for voluntary dissolution have~~  
30 ~~been eliminated; and~~

31 ~~(c) State that the limited liability company's name satisfies the~~  
32 ~~requirements of RCW 25.15.010.~~

33 ~~(2) If the secretary of state determines that the application~~  
34 ~~contains the information required by subsection (1) of this section and~~  
35 ~~that the name is available, the secretary of state shall reinstate the~~  
36 ~~limited liability company and give the limited liability company~~  
37 ~~written notice of the reinstatement that recites the effective date of~~

1 ~~reinstatement. If the name is not available, the limited liability~~  
2 ~~company must file with its application for reinstatement an amendment~~  
3 ~~to its certificate of formation reflecting a change of name.~~

4 ~~(3) When the reinstatement is effective, it relates back to and~~  
5 ~~takes effect as of the effective date of the voluntary dissolution and~~  
6 ~~the limited liability company may resume carrying on its business as if~~  
7 ~~the voluntary dissolution had never occurred.~~

8 ~~(4) If an application for reinstatement is not made within the one~~  
9 ~~hundred twenty day period set forth in subsection (1) of this section,~~  
10 ~~or if the application made within this period is not granted, the~~  
11 ~~secretary of state shall cancel the limited liability company's~~  
12 ~~certificate of formation.)~~

13 (2)(a) Except as provided in (b) of this subsection, revocation of  
14 dissolution must be approved in the same manner as the dissolution was  
15 approved unless that approval permitted revocation in some other  
16 manner, in which event the dissolution may be revoked in the manner  
17 permitted.

18 (b) If dissolution occurred upon the happening of events specified  
19 in the limited liability company agreement, revocation of dissolution  
20 must be approved in the manner necessary to amend the provisions of the  
21 limited liability company agreement specifying the events of  
22 dissolution.

23 (3) After the revocation of dissolution is approved, the limited  
24 liability company may revoke the dissolution and the certificate of  
25 dissolution by delivering to the secretary of state for filing a  
26 certificate of revocation of dissolution that sets forth:

27 (a) The name of the limited liability company and a statement that  
28 the name satisfies the requirements of RCW 25.15.010; if the name is  
29 not available, the limited liability company must file a certificate of  
30 amendment changing its name with the certificate of revocation of  
31 dissolution;

32 (b) The effective date of the dissolution that was revoked;

33 (c) The date that the revocation of dissolution was approved;

34 (d) If the limited liability company's managers revoked the  
35 dissolution, a statement to that effect;

36 (e) If the limited liability company's managers revoked a  
37 dissolution approved by the company's members, a statement that

1 revocation was permitted by action by the managers alone pursuant to  
2 that approval; and

3 (f) If member approval was required to revoke the dissolution, a  
4 statement that revocation of the dissolution was duly approved by the  
5 members in accordance with subsection (2) of this section.

6 (4) Revocation of dissolution and revocation of the certificate of  
7 dissolution are effective upon the filing of the certificate of  
8 revocation of dissolution.

9 (5) When the revocation of dissolution and revocation of the  
10 certificate of dissolution are effective, they relate back to and take  
11 effect as of the effective date of the dissolution and the limited  
12 liability company resumes carrying on its activities as if the  
13 dissolution had never occurred.

14 **Sec. 9.** RCW 25.15.295 and 1994 c 211 s 806 are each amended to  
15 read as follows:

16 ~~((1) Unless otherwise provided in a limited liability company~~  
17 ~~agreement, a manager who has not wrongfully dissolved a limited~~  
18 ~~liability company or, if none, the members or a person approved by the~~  
19 ~~members or, if there is more than one class or group of members, then~~  
20 ~~by each class or group of members, in either case, by members~~  
21 ~~contributing, or required to contribute, more than fifty percent of the~~  
22 ~~agreed value (as stated in the records of the limited liability company~~  
23 ~~required to be kept pursuant to RCW 25.15.135) of the contributions~~  
24 ~~made, or required to be made, by all members, or by the members in each~~  
25 ~~class or group, as appropriate, may wind up the limited liability~~  
26 ~~company's affairs. The superior courts, upon cause shown, may wind up~~  
27 ~~the limited liability company's affairs upon application of any member~~  
28 ~~or manager, his or her legal representative or assignee, and in~~  
29 ~~connection therewith, may appoint a receiver.~~

30 ~~(2) Upon dissolution of a limited liability company and until the~~  
31 ~~filing of a certificate of cancellation as provided in RCW 25.15.080,~~  
32 ~~the persons winding up the limited liability company's affairs may, in~~  
33 ~~the name of, and for and on behalf of, the limited liability company,~~  
34 ~~prosecute and defend suits, whether civil, criminal, or administrative,~~  
35 ~~gradually settle and close the limited liability company's business,~~  
36 ~~dispose of and convey the limited liability company's property,~~

1 ~~discharge or make reasonable provision for the limited liability~~  
2 ~~company's liabilities, and distribute to the members any remaining~~  
3 ~~assets of the limited liability company.)~~)

4 (1) A limited liability company continues after dissolution only  
5 for the purpose of winding up its activities.

6 (2) In winding up its activities, the limited liability company:

7 (a) May file a certificate of dissolution with the secretary of  
8 state to provide notice that the limited liability company is  
9 dissolved, preserve the limited liability company's business or  
10 property as a going concern for a reasonable time, prosecute and defend  
11 actions and proceedings, whether civil, criminal, or administrative,  
12 transfer the limited liability company's property, settle disputes, and  
13 perform other necessary acts; and

14 (b) Shall discharge the limited liability company's liabilities,  
15 settle and close the limited liability company's activities, and  
16 marshal and distribute the assets of the company.

17 (3) Unless otherwise provided in a limited liability company  
18 agreement, the persons responsible for managing the business and  
19 affairs of a limited liability company under RCW 25.15.150 are  
20 responsible for winding up the activities of a dissolved limited  
21 liability company. If a dissolved limited liability company does not  
22 have any managers or members, the legal representative of the last  
23 person to have been a member may wind up the activities of the  
24 dissolved limited liability company, in which event the legal  
25 representative is a manager for the purposes of RCW 25.15.155.

26 (4) If the persons responsible for winding up the activities of a  
27 dissolved limited liability company under subsection (3) of this  
28 section decline or fail to wind up the limited liability company's  
29 activities, a person to wind up the dissolved limited liability  
30 company's activities may be appointed by the consent of the transferees  
31 owning a majority of the rights to receive distributions as transferees  
32 at the time consent is to be effective. A person appointed under this  
33 subsection:

34 (a) Is a manager for the purposes of RCW 25.15.155; and

35 (b) Shall promptly amend the certificate of formation to state:

36 (i) The name of the person who has been appointed to wind up the  
37 limited liability company; and

38 (ii) The street and mailing address of the person.

1       (5) The superior court may order judicial supervision of the  
2 winding up, including the appointment of a person to wind up the  
3 dissolved limited liability company's activities, if:

4       (a) On application of a member, the applicant establishes good  
5 cause; or

6       (b) On application of a transferee, a limited liability company  
7 does not have any managers or members and within a reasonable time  
8 following the dissolution no person has been appointed pursuant to  
9 subsection (3) or (4) of this section.

10       NEW SECTION. Sec. 10. A new section is added to chapter 25.15 RCW  
11 to read as follows:

12       (1) A dissolved limited liability company that has filed a  
13 certificate of dissolution with the secretary of state may dispose of  
14 the known claims against it by following the procedure described in  
15 subsection (2) of this section.

16       (2) A dissolved limited liability company may notify its known  
17 claimants of the dissolution in a record. The notice must:

18       (a) Specify the information required to be included in a known  
19 claim;

20       (b) Provide a mailing address to which the known claim must be  
21 sent;

22       (c) State the deadline for receipt of the known claim, which may  
23 not be fewer than one hundred twenty days after the date the notice is  
24 received by the claimant; and

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

27       (3) A known claim against a dissolved limited liability company is  
28 barred if the requirements of subsection (2) of this section are met  
29 and:

30       (a) The known claim is not received by the specified deadline; or

31       (b) In the case of a known claim that is timely received but  
32 rejected by the dissolved limited liability company, the claimant does  
33 not commence an action to enforce the known claim against the limited  
34 liability company within ninety days after the receipt of the notice of  
35 rejection.

36       (4) For purposes of this section, "known claim" means any claim or  
37 liability that either:

1 (a)(i) Has matured sufficiently, before or after the effective date  
2 of the dissolution, to be legally capable of assertion against the  
3 dissolved limited liability company, whether or not the amount of the  
4 claim or liability is known or determinable; or (ii) is unmatured,  
5 conditional, or otherwise contingent but may subsequently arise under  
6 any executory contract to which the dissolved limited liability company  
7 is a party, other than under an implied or statutory warranty as to any  
8 product manufactured, sold, distributed, or handled by the dissolved  
9 limited liability company; and

10 (b) As to which the dissolved limited liability company has  
11 knowledge of the identity and the mailing address of the holder of the  
12 claim or liability and, in the case of a matured and legally assertable  
13 claim or liability, actual knowledge of existing facts that either (i)  
14 could be asserted to give rise to, or (ii) indicate an intention by the  
15 holder to assert, such a matured claim or liability.

16 **Sec. 11.** RCW 25.15.303 and 2006 c 325 s 1 are each amended to read  
17 as follows:

18 Except as provided in section 10 of this act, the dissolution of a  
19 limited liability company does not take away or impair any remedy  
20 available to or against that limited liability company, its managers,  
21 or its members for any right or claim existing, or any liability  
22 incurred at any time, whether prior to or after dissolution, unless the  
23 limited liability company has filed a certificate of dissolution under  
24 section 6 of this act, that has not been revoked under RCW 25.15.293,  
25 and an action or other proceeding thereon is not commenced within three  
26 years after the ((effective date)) filing of the certificate of  
27 dissolution. Such an action or proceeding by or against the limited  
28 liability company may be prosecuted or defended by the limited  
29 liability company in its own name.

30 **Sec. 12.** RCW 25.15.340 and 1994 c 211 s 907 are each amended to  
31 read as follows:

32 (1) A foreign limited liability company doing business in this  
33 state may not maintain any action, suit, or proceeding in this state  
34 until it has registered in this state, and has paid to this state all  
35 fees and penalties for the years or parts thereof, during which it did  
36 business in this state without having registered.

1 (2) Neither the failure of a foreign limited liability company to  
2 register in this state ((does not impair)) nor the issuance of a  
3 certificate of cancellation with respect to a foreign limited liability  
4 company's registration in this state impairs:

5 (a) The validity of any contract or act of the foreign limited  
6 liability company;

7 (b) The right of any other party to the contract to maintain any  
8 action, suit, or proceeding on the contract; or

9 (c) ((Prevent)) The foreign limited liability company from  
10 defending any action, suit, or proceeding in any court of this state.

11 (3) A member or a manager of a foreign limited liability company is  
12 not liable for the obligations of the foreign limited liability company  
13 solely by reason of the limited liability company's having done  
14 business in this state without registration.

15 **Sec. 13.** RCW 25.15.805 and 1994 c 211 s 1302 are each amended to  
16 read as follows:

17 (1) The secretary of state shall adopt rules establishing fees  
18 which shall be charged and collected for:

19 (a) Filing of a certificate of formation for a domestic limited  
20 liability company or an application for registration of a foreign  
21 limited liability company;

22 (b) Filing of a certificate of ((~~cancellation~~)) dissolution for a  
23 domestic ((~~or foreign~~)) limited liability company;

24 (c) Filing a certificate of cancellation for a foreign limited  
25 liability company;

26 (d) Filing of a certificate of amendment or restatement for a  
27 domestic or foreign limited liability company;

28 ((~~d~~)) (e) Filing an application to reserve, register, or transfer  
29 a limited liability company name;

30 ((~~e~~)) (f) Filing any other certificate, statement, or report  
31 authorized or permitted to be filed;

32 ((~~f~~)) (g) Copies, certified copies, certificates, service of  
33 process filings, and expedited filings or other special services.

34 (2) In the establishment of a fee schedule, the secretary of state  
35 shall, insofar as is possible and reasonable, be guided by the fee  
36 schedule provided for corporations governed by Title 23B RCW. Fees for

1 copies, certified copies, certificates of record, and service of  
2 process filings shall be as provided for in RCW 23B.01.220.

3 (3) All fees collected by the secretary of state shall be deposited  
4 with the state treasurer pursuant to law.

5 NEW SECTION. **Sec. 14.** RCW 25.15.080 (Cancellation of certificate)  
6 and 1994 c 211 s 203 are each repealed.

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# HOUSE BILL REPORT

## HB 2657

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to the dissolution of limited liability companies.

**Brief Description:** Addressing the dissolution of limited liability companies.

**Sponsors:** Representative Pedersen.

**Brief History:**

**Committee Activity:**

Judiciary: 1/20/10, 2/1/10 [DPS].

**Brief Summary of Substitute Bill**

- Creates a certificate of dissolution for limited liability companies to provide notice of dissolution.
- Establishes procedures to allow a dissolved limited liability company to dispose of known claims.
- Removes all references to a "certificate of cancellation" for domestic limited liability companies.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts and Ross.

**Staff:** Courtney Barnes (786-7194).

**Background:**

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership. The LLCs were authorized by the Legislature in 1994. A properly constructed LLC can be a business entity in which the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

ownership enjoys limited liability like a corporation's shareholders, but the entity itself is not taxed as a corporation. Domestic LLCs are entities formed under the Washington LLC Act. Foreign LLCs are entities formed under the laws of a state other than Washington or a foreign country.

#### Dissolution of an LLC.

An LLC may be dissolved voluntarily, administratively, or judicially. Dissolution does not terminate the existence of the LLC. Instead, it begins a period in which the affairs of the LLC must be wound up. Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution.

#### Revocation of Dissolution.

A voluntarily-dissolved LLC may file for reinstatement by filing an application with the Office of the Secretary of State (OSOS). Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

#### Winding Up the Affairs of a Dissolved LLC.

After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC.

#### Cancellation of Certificate.

After an LLC is dissolved, the certificate of formation that created the LLC is canceled. Recently, the Washington Supreme Court held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under this decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

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### **Summary of Substitute Bill:**

#### Certificate of Dissolution.

A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. The certificate of dissolution must be signed by the person who is authorized to wind up the LLC's affairs.

The dissolution of an LLC does not eliminate any cause of action by or against the LLC that was incurred prior to or after the dissolution if an action is filed within three years after the

filing of the certificate of dissolution. This provision does not apply if the dissolved LLC has disposed of known claims.

#### Revocation of Dissolution.

The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLCs dissolved due to the happening of events specified in the LLCs agreement or by written consent of all the LLC's members. To revoke its voluntary dissolution, an LLC must file a certificate of revocation of dissolution with the OSOS. Procedures are created to address how a revocation of dissolution must be approved by the LLC's managers or members.

#### Winding Up the Affairs of a Dissolved LLC.

The provisions addressing who may wind up a LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities. For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

#### Disposing of Known Claims.

A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of the known claims against it by providing notice to known claimants. Procedures are created to address what the notice to known claimants must contain and how claimants must notify a dissolved LLC of a claim. A known claim against an LLC is barred and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and:

- the known claim was not received by a specified deadline; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of rejection.

#### Certificate of Cancellation.

All references to a "certificate of cancellation" for domestic LLCs are removed. The issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action, suit, or proceeding against the foreign LLC.

**Substitute Bill Compared to Original Bill:**

The substitute bill removes all references to a "certificate of cancellation" both in the original bill and under current law for domestic LLCs. The substitute bill specifies that the issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action against the foreign LLC. The substitute bill modifies the provisions in the original bill for filing a certificate of dissolution, revoking a certificate of dissolution, winding up the affairs of a dissolved LLC, and disposing of known claims.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill will address and resolve two issues that need immediate attention. First, under the *Chadwick Farms* decision issued by the Washington Supreme Court, a certificate of cancellation abates all legal claims. This decision leaves creditors in an untenable situation. The second issue relates to voluntary dissolution of an LLC. The law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation within 120 days of its dissolution. Many LLCs require more than 120 days to dissolve, and this requirement creates unintended problems. The bill is a simple bill and the intent is to make technical corrections. A certificate of cancellation is an old concept. The Washington State Bar Association intends on significantly revising the LLC Act in the future and will likely remove certificates of cancellation from the LLC Act.

(With concerns) There may be an issue with the provisions allowing a dissolved LLC to dispose of known claims. This provision may establish a 90-day statute of limitations for known claims. This limitation may have serious consequences in circumstances where a claim is known to the LLC, but the elements are not known to the potential claimant. The bill should be amended to address these types of claims. The bill amends the claims survival statute and only references a certificate of dissolution. This provision needs to be amended to address situations where an LLC does not file a certificate of dissolution but files a certificate of cancellation.

(Opposed) None.

**Persons Testifying:** (In support) Brian Todd and Don Percival, Washington State Bar Association; and Larry Shannon, Washington State Association for Justice.

(With concerns) Jeremy Stillwell, Washington State Community Associations Institute.

**Persons Signed In To Testify But Not Testifying:** None.

# SENATE BILL REPORT

## SHB 2657

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As of February 18, 2010

**Title:** An act relating to the dissolution of limited liability companies.

**Brief Description:** Addressing the dissolution of limited liability companies.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representative Pedersen).

**Brief History:** Passed House: 2/10/10, 96-0.

**Committee Activity:** Judiciary: 2/17/10.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Kim Johnson (786-7472)

**Background:** A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

An LLC may be dissolved voluntarily, administratively, or judicially. After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC. After an LLC is dissolved, the certificate of formation that created the LLC is canceled.

Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution. A voluntarily-dissolved LLC may file for reinstatement by filing an application with the Office of the Secretary of State (OSOS). Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

Recently, the Washington Supreme Court held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under this decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

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**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Amendments):** Certificate of Dissolution. A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. The dissolution of an LLC does not eliminate any cause of action by or against the LLC that was incurred prior to or after the dissolution if an action is filed within three years after the filing of the certificate of dissolution. This provision does not apply if the dissolved LLC has disposed of known claims.

Disposing of Known Claims. A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of the known claims against it by providing notice to known claimants. Procedures are created to address what the notice to known claimants must contain and how claimants must notify a dissolved LLC of a claim. A known claim against an LLC is barred and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and:

- the known claim was not received by a specified deadline; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of rejection.

Revocation of Dissolution. The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLC's dissolved due to the happening of events specified in the LLC's agreement or by written consent of all the LLC's members.

Winding Up the Affairs of a Dissolved LLC. The provisions addressing who may wind up an LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities. For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

Certificate of Cancellation. All references to a certificate of cancellation for domestic LLCs are removed. The issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action, suit, or proceeding against the foreign LLC.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill seeks to address a latent defect in the LLC Act that has been present since it was adopted in Washington. The statute as it was proposed to us originally did not include a process of cancellation. The concept of cancellation stemmed from a concern expressed by the OSSO with their computer system and a perceived need to have a clear end to an LLC so it may be wiped off the books. I would also like to point out that I agree with the Supreme Court's interpretation of the statute in Chadwick. There is no need for the cancellation process. The bill before you lines up the dissolution process for LLCs with Limited Liability Partnerships and the Business Corporation Act.

As the Chair of the Partnership and LLC Committee of the Business Law Section of the Washington State Bar Association (WSBA), we take responsibility for drafting the bill. It is important to note that it has also worked its way through various other committees of the WSBA and has been well worked. We have received some comments regarding section 10, and I think that everyone agrees what needs to happen and we just need to hone the language to meet everyone's needs. We need to deal with the issues raised by the Chadwick case regarding the difference between dissolution and cancellation. It is important to think about this in the context of the other business entities. All we should worry about regarding LLC dissolution is when a claim may be brought by or against the LLC after dissolution has begun. What the bill does is make the LLC statutes related to dissolution, consistent with the other business entity statutes. All that is relevant is whether the entity has dissolved and if you have dissolved have you given notice to the world that you are dissolved. This bill provides clarity on these important questions. We support the bill we just seek very clear language on what claims survive, and feel we have reached agreement with the WSBA on this issue.

**Persons Testifying:** PRO: Representative Pedersen, prime sponsor; Brian Todd, Don Percival, WSBA Business Law Section; Marlyn Hawkins, Washington State Community Association Institute.

# HOUSE BILL REPORT

## SHB 2657

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### As Passed Legislature

**Title:** An act relating to the dissolution of limited liability companies.

**Brief Description:** Addressing the dissolution of limited liability companies.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representative Pedersen).

**Brief History:**

**Committee Activity:**

Judiciary: 1/20/10, 2/1/10 [DPS].

**Floor Activity:**

Passed House: 2/10/10, 96-0.

Senate Amended.

Passed Senate: 3/2/10, 46-0.

House Concurred.

Passed House: 3/6/10, 95-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Creates a certificate of dissolution for limited liability companies to provide notice of dissolution.
- Establishes procedures to allow a dissolved limited liability company to dispose of known claims.
- Removes all references to a "certificate of cancellation" for domestic limited liability companies.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts and Ross.

**Staff:** Courtney Barnes (786-7194).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership. The LLCs were authorized by the Legislature in 1994. A properly constructed LLC can be a business entity in which the ownership enjoys limited liability like a corporation's shareholders, but the entity itself is not taxed as a corporation. Domestic LLCs are entities formed under the Washington LLC Act. Foreign LLCs are entities formed under the laws of a state other than Washington or a foreign country.

### Dissolution of an LLC.

An LLC may be dissolved voluntarily, administratively, or judicially. Dissolution does not terminate the existence of the LLC. Instead, it begins a period in which the affairs of the LLC must be wound up. Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution.

### Revocation of Dissolution.

A voluntarily-dissolved LLC may file for reinstatement by filing an application with the Office of the Secretary of State (OSOS). Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

### Winding Up the Affairs of a Dissolved LLC.

After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC.

### Cancellation of Certificate.

After an LLC is dissolved, the certificate of formation that created the LLC is canceled. Recently, the Washington Supreme Court held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under this decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

## **Summary of Substitute Bill:**

### Certificate of Dissolution.

A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. The certificate of dissolution must be signed by the person who is authorized to wind up the LLC's affairs.

The dissolution of an LLC does not eliminate any cause of action by or against the LLC that was incurred prior to or after the dissolution, unless the LLC has filed a certificate of dissolution that has not been revoked, and an action is not filed within three years after the filing of the certificate of dissolution. This provision does not apply if the dissolved LLC has disposed of known claims.

#### Revocation of Dissolution.

The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLCs dissolved due to the happening of events specified in the LLCs agreement or by written consent of all the LLC's members. To revoke its voluntary dissolution, an LLC must file a certificate of revocation of dissolution with the OSOS. Procedures are created to address how a revocation of dissolution must be approved by the LLC's managers or members.

#### Winding Up the Affairs of a Dissolved LLC.

The provisions addressing who may wind up a LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities. For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

#### Disposing of Known Claims.

A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of the known claims against it by providing notice to known claimants. Procedures are created to address what the notice to known claimants must contain and how claimants must notify a dissolved LLC of a claim. A known claim against an LLC is barred and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and:

- the known claim was not received by a specified deadline; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of rejection.

#### Certificate of Cancellation.

All references to a "certificate of cancellation" for domestic LLCs are removed. The issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action, suit, or proceeding against the foreign LLC.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill will address and resolve two issues that need immediate attention. First, under the *Chadwick Farms* decision issued by the Washington Supreme Court, a certificate of cancellation abates all legal claims. This decision leaves creditors in an untenable situation. The second issue relates to voluntary dissolution of an LLC. The law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation within 120 days of its dissolution. Many LLCs require more than 120 days to dissolve, and this requirement creates unintended problems. The bill is a simple bill and the intent is to make technical corrections. A certificate of cancellation is an old concept. The Washington State Bar Association intends on significantly revising the LLC Act in the future and will likely remove certificates of cancellation from the LLC Act.

(With concerns) There may be an issue with the provisions allowing a dissolved LLC to dispose of known claims. This provision may establish a 90-day statute of limitations for known claims. This limitation may have serious consequences in circumstances where a claim is known to the LLC, but the elements are not known to the potential claimant. The bill should be amended to address these types of claims. The bill amends the claims survival statute and only references a certificate of dissolution. This provision needs to be amended to address situations where an LLC does not file a certificate of dissolution but files a certificate of cancellation.

(Opposed) None.

**Persons Testifying:** (In support) Brian Todd and Don Percival, Washington State Bar Association; and Larry Shannon, Washington State Association for Justice.

(With concerns) Jeremy Stillwell, Washington State Community Associations Institute.

**Persons Signed In To Testify But Not Testifying:** None.

**Chairman** We'll move directly to - dyslexic challenge - House Bill 2657 and Courtney, if you could give us the staff report.

**Courtney Barnes:** House Bill 2657 relates to the dissolution of Limited Liability Companies. A Limited Liability Company is a type of business entity that provides owners with limited personal liability for the company's debts and actions. LLC's were authorized by the legislature in 1994.

LLC's are created by filing a Certificate of Formation with the office of the Secretary of State. They can be dissolved in a number of ways such as reaching a dissolution date set at the time the LLC was created or by mutual consent of all the members in the company. Administrative dissolution by the Secretary of State may occur if the LLC fails to pay fees or complete reports required by the Secretary of State.

Dissolution begins a period in which the affairs of the LLC must be wound up. Winding up involves liquidating assets and paying creditors and distributing proceeds from the liquidation of assets.

After an LLC is dissolved the company's Certificate of Formation is cancelled. Cancellation may occur in a number of ways. For example, a Certificate of Cancellation may be filed by the person authorized to wind up the affairs of the LLC.

In a recent decision "Chadwick Farms Owners Association versus FHC, LLC," the Washington Supreme Court held that the cancellation of an LLC's Certificate of Formation bars the LLC from filing or continuing a lawsuit, and it also bars a claimant from filing or continuing a lawsuit against the LLC.

House Bill 2657 makes a number of changes to the laws governing LLCs. Under the bill a new document, a Certificate of Dissolution is created for LLCs. A dissolved LLC may file a Certificate of Dissolution with the Secretary of State to provide notice that the company is dissolved. Procedures are created to address how a Certificate of Dissolution may be revoked if the revocation is approved by the company's managers or members. Under current law, the Secretary of State is required to cancel a voluntarily dissolved LLC's Certificate of Formation if the LLC does not file an application for reinstatement within 120 days of its dissolution. House Bill 2657 removes this requirement.

Under the bill, a dissolved LLC that has filed a Certificate of Dissolution with the Secretary of State may dispose of all or any of the known claims against it by giving written notice of its dissolution to the holders of known claims after the effective date of dissolution. A known claim against an LLC is barred, and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and did not deliver written notice of the claim to the dissolved LLC, or the holder of the known claim that is rejected by the dissolution, by the dissolved LLC, does not commence a proceeding to enforce the known claim within 90 days of the effective date of the rejection notice.

The provisions addressing who may wind up the LLC's affairs are revised and for the purposes of winding up, a dissolved LLC may preserve the LLC's activities and properties as a going concern for a reasonable period of time, prosecute and defend actions and proceedings, transfer the LLC's property, settle disputes, and perform other acts necessary and appropriate to winding up.

Statutory language that states that an LLC will be a separate entity until cancellation of the Certificate of Formation is removed. Neither the dissolution of an LLC nor the filing of a Certificate of Dissolution or Certificate of Cancellation eliminates any cause of action by or against an LLC if an action on the claim is filed within three years after filing the Certificate of Dissolution.

I'm happy to answer any questions.

**Chairman:** Do you have any questions for Courtney? Ok, Mr. Vice Chair.

**Vice-chairman:** Mr. Chair, there are four who wish to testify. We'll call them all up together: Brian Todd and Don Percival, Jeremy Stillwell and Larry Shannon.

**Vice-chairman:** Just introduce yourselves for the record please.

**Chairman:** Larry, you might have to find your own chair but I think there are some available.

**Brian Todd:** I guess I'll lead off.

Thank you Mr. Chair. My name's Brian Todd. I am the Chair of the Partnership and LLC Law Committee, the Business Law Section of the Washington Bar Association. To my immediate right is Don Percival who is the chair of the sub-committee that drafted this bill. Don also has the distinction of being the chair of the committee and the primary draftsman of the original LLC Act when it was enacted back in the, in the 1990s.

We're here in support of House Bill 2657. The bill will address and resolve two targeted issues that the committee has identified as needing current attention. We're undertaking an overall review of our LLC Act with the intent of updating it, bringing it into more current practice consistent with acts across the country.

That process will probably take another couple of years before it's done but we felt that these two particular issues needed addressing right away. The first is the circumstance that exists following the Chadwick Farms decision that Washington Supreme Court handed down in mid-2009 which holds, as Ms. Barnes pointed out, that an LLC, the Certificate of Formation of which has been cancelled, ceases to exist as an entity and consequently cannot participate in litigation. So, it cannot sue, it cannot be sued, and any litigation pending at the time the Certificate of Formation is cancelled must abate. That, I think, is an untenable situation for creditors of the LLC, and we felt we needed to address a mechanism, put forth a mechanism in the statute for resolving claims against LLC's in the process of winding up.

The second issue that we identified as needing attention has to do with what was intended to be a remedial provision, but unintentionally creates an obligation on the part of the Secretary of State's Office to cancel the Certificate of Formation of any voluntarily

dissolved LLC 120 days after the effective date of dissolution. LLC's frequently take longer than 120 days to complete their winding up process. That's, I think, an unintended glitch in the statute which this bill would resolve.

I'd like to turn the microphone over to Don Percival now who can talk about the substantive provisions of the bill and the purposes for those provisions.

**20:09**

**Don Percival:** Good Morning and thanks for the opportunity to testify.

I think that Courtney Barnes actually did a very nice job of summarizing, not only the current LLC Act, to the extent it relates to this bill but also what this bill does. It's really a very simple bill, I think it can be fairly described as technical corrections and that's certainly sort of the mindset we had going into the process of drafting this version of the bill. I'm not sure it is necessary to walk you through section by section, but I'll give you the highlights just to remind you of some of the things that Courtney already told you.

First, it's important, in Section One the bill does away with the statement that the cancellation of the LLC's Certificate of Formation, that the separate existence of the LLC as an entity continues until cancellation of the Certificate of Formation. This is one of the provisions in the existing act that the Supreme Court looked at when it rendered its decision in the Chadwick Farms case last year and I don't think there is much disagreement that the appropriate focus should not be on whether the entity exists or not, that's kind of a concept that has no independent significance. The real key issues are: has it dissolved, meaning have circumstances occurred that trigger a process for winding up the affairs of the LLC, and then what is the process for identifying and resolving any claims by or against the LLC? If you answer those questions, you don't really have to answer the question: does the thing still exist or exactly when does it cease to exist? And that is why the current regime, we want to migrate from the current regime to a regime in which the focus is no longer on the cancellation of the certificate but rather on the giving of public notice of the occurrence of a dissolution and then a systematic way to identify and resolve claims. So, Section One eliminates the statement that suggests, by negative inference, that if a Certificate of Cancellation is filed the LLC goes, "poof," goes away and that was the basis for the Chadwick Farms decision.

**Chairman:** I'm going to interrupt you because I think that probably one question that might be important for you to comment on is why we have a concept in the LLC Act of a Certificate of Cancellation at all.

**Don Percival:** Well, I think the reason is historical and that is if you go back to the original creation of the LLC Act, this was a common way of approaching the subject, at the time, in fact the Delaware statute still contains a provision similar to this, sort of to our amazement, we've learned over time...I don't think we intended that cancellation of the certificate would result in the inability to bring actions against the LLC or the inability of the LLC to take actions. That was the extra step that the Chadwick Farms court took last year that produced the anxiety among those of us who are familiar with LLC practice. So, as I think we've shared with you in separate correspondence the, we

would have no problem with eliminating the concept of the Certificate of Cancellation. We did not propose to do that in the state bar sponsored legislation just because we wanted, our philosophy in drafting this was to do the minimum possible to affect the fix of the two issues that Brian identified. You don't have to eliminate Certificates of Cancellation to do that as long as you make clear that there isn't really any independent significance, but if we want to go ahead and do that, and I think when we do the entire LLC Act revision in the next couple of years, that's a feature that you would see in those proposals.

**Chairman:** Ok, and can you comment for practitioners, is there...it strikes me that it may create, if we have multiple steps on the way to eliminating Certificates of Cancellation than that may create a certain amount of confusion about how LLC agreements ought to be drafted between now and then.

**Don Percival:** I'm very sympathetic with that comment, there is a potential for some confusion. I think that the important thing is that we introduce the notion of Certificates of Dissolution, which I know is a concept that the Secretary of State supports. Make that the trigger point for the taking of the other necessary steps to resolve claims by or against the LLC, and then whether or not you ultimately cancel the Certificate of Formation doesn't really matter.

**Chairman:** Ok. We're going to need to move on but obviously we'll be working with you over the next week or so on trying to get a substitute together.

**Don Percival:** Thanks very much.

**Larry Shannon:** Thank you Mr. Chair and members of the committee. For the record, my name is Larry Shannon and I'm representing the Washington State Association for Justice. And I'm here to speak in support of 2657 but with one question and possibly a proposed amendment to what is before you. I've been here long enough to have actually been involved, in 1993 and '94, in the formation process of establishing this as a business model that can be used in Washington State, I can say with some confidence that even in discussions that we had with the chair of this committee at the time, now Judge Applewick, that the specific issue in Chadwick Farms was discussed and it never really occurred to us that the court would rule in that fashion and, none-the-less, they did. So here we are today, and I believe...

**Chairman:** That's the first time that that's ever happened.

**Larry Shannon:** First time ever Mr. Chair. And this is a good fix for that. I do want to ask a question on the record about the last two sections and raise a potential issue about this question of a known claim. Under the draft before you, a notice that goes out on a

known claim effectively establishes a 90 day statute of limitations, statute of repose. As a read it that's an absolute time frame under which that claim has to then be filed. Now, let's translate that into where my question would go as to what that means in the real world and perhaps use an example that this committee may be familiar with. Think about it as a development that was put together with homes where there are questions about, perhaps, the quality of the construction. If that LLC notifies the home owners that they are dissolving and that there are potential claims that exist, but that are unknown to the homeowner at that point in time, does this now establish a 90 day statute of limitations and statute of repose? And that is how I would read it. I believe when you go to your last section where you talk about unknown claims this could be a fairly easy fix by just putting in, and I'd have to check the words and I apologize to the gentleman with me I have not had a chance to talk with him about that but possibly just using the word contingent claims, would cover that gamete of claims where the claim may possibly be known to the LLC but the elements of the claim are not known to the potential claimant. And that would clarify the fact that merely receiving this letter on something, the elements of which are not known to them at the time, does not then extinguish their rights in 90 days. With that, Mr. Chair, I do want to say that I believe this is a needed fix and correction to the statute and I hope we can work this out and move this ahead. I'll be happy to answer any questions.

**Chairman:** Thanks, and Larry, I think it's likely that this is a moving target for the next bit but we'll keep you in the loop on that. My, I'd be interested to hear the perspective of the bar on this if the bar has a perspective, I think part of what we're going to be aiming for is consistency among the different kinds of business entities about the disposition of claims at dissolution. So, it might be interesting to think about whether this provision is different from what would apply, for example, to a Corporation or a Limited Partnership, and I don't know, Don or Brian, if you want to comment.

**Don Percival:** Well, I'll take a shot at this. I think you put your finger on the concept here. As you know, we lifted the description, the definition of Known Claims, out of the Business Corporation Act and the comparable procedure for resolution of claims there. It may be that that can be improved and if it is I think we'd probably ought to do all the various enabling statutes at the same time. You will see in Section Five, Three-A, the definition of Known Claims. It does refer to matured claims or un-matured, conditional, or otherwise contingent claims...

**Chairman:** (interrupts and conversation is briefly unintelligible)

**Ron Percival:** So there was an attempt address the issue, so I think that's the perspective of the Business Law section and he's presented the perspective of the Trial Lawyers. We're happy to work to...but I think you're right that whatever we do we ought to do the same in all the statutes and not just the LLC Act. So, I guess my preference at this point

would be to take what we've got in the other act and employ that, at least for now, in the LLC Act as we do in this bill.

**Chairman:** And just to finish up that thought before we go to Representative Flanagan, I think Larry, on the homeowner issue, for example the, right now the theory would be either a warranty that would be in a contract with the builder or it would be an implied warranty of habitability, as weak as that is in our current law. So, you might take a look at that language. It strikes me that there might already be a basis for considering that unknown claim that could not be disposed of by the Notice Procedure, but...

**Larry Shannon:** I appreciate and I do agree that we had some disagreement as to exactly how and where this would apply but I'd be happy to continue those discussions, I appreciate the comment on the moving target Mr. Chair, and we'll be happy to work on that.

**Chair:** Super, and Courtney, we'll just keep Larry, and, ok, Representative Flanagan.

**Representative Flanagan:** Thank you Mr. Chair. I guess I'm a little concerned, if this is a significant issue, that we wait until some other laws are passed, seems sometimes those things go on much longer than even members of the bar imagine, when we're up here. And, if we are going to violate some people's opportunities when they really would have no other redress then I would like, at least, consideration of why we wouldn't do it at this time.

**Chairman:** Don't you agree? Ok. Mr. Stillwell.

**Jeremy Stillwell:** Thank you Mr. Chairman and members of the committee, and thank you for hearing House Bill 2657. My name is Jeremy Stillwell. I'm here today testifying on behalf of Community Association's Institute, I am an attorney member of their Legislative Action Committee. I wanted to take a moment and just highlight the Chadwick Farms decision and how that actually gets applied. The filing of a Certificate of Cancellation can occur, currently, by an LLC at any given time. You can have an ongoing lawsuit against an LLC, two weeks before trial, they walk in and file a Certificate of Cancellation and "poof", it is gone and you are left holding the bag. I also want to highlight that this is not just...while I'm testifying here on behalf Community Association's Institute; this is not just a homeowner issue. It's a not just a Community Association issue. This case just happened to be a condo case. This case applies to all LLC's within the State of Washington. We do support this bill. I have one concern with Section Six, whether it actually gets us out of the problem that raised the issue. If you look at Section Six, the very last phrase, or the last half of that section, refers to where it

starts to speak, "unless an action, or other proceeding thereon, is not commenced within three years after filing the Certificate of Dissolution". Now, our association would hope that a court would interpret Section Six as a whole and say that a claimant is not barred from pursuing that claim unless someone has taken the affirmative step of filing a Certificate of Dissolution. However, as we saw in the Chadwick Farms case, a Certificate of Dissolution doesn't always get filed. It can be administratively dissolved; there is not Certificate of Dissolution. You skip that step and go straight to the cancellation. Our concern is that someone could file...skip the process of Dissolution completely, file a certificate to cancel the LLC and the issue would then be: does the Survival Statute apply? Because...

**Chairman:** I think that, I'm sorry to cut you off, but I think that is one of the key concerns that is leading us to a broader approach to resolving this problem. So, we will stay in touch as we continue to work on this and appreciate your sharing that concern, we will work to address it.

**Jeremy Stillwell:** Thank you.

**Chairman:** Ok, any other questions for the panel? Ok. Thank you all very much. That will conclude out public hearing on House Bill 2657.

# APPENDIX C

CERTIFICATION OF ENROLLMENT  
SECOND SUBSTITUTE HOUSE BILL 1235

53rd Legislature  
1994 Regular Session

Passed by the House March 6, 1994  
Yeas 87 Nays 0

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Speaker of the  
House of Representatives

Passed by the Senate March 1, 1994  
Yeas 46 Nays 3

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President of the Senate

Approved

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Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1235** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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Chief Clerk

FILED

Secretary of State  
State of Washington

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SECOND SUBSTITUTE HOUSE BILL 1235

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AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington                    53rd Legislature                    1994 Regular Session

By House Committee on Judiciary (originally sponsored by  
Representatives Appelwick, Padden, Ludwig and Johanson)

Read first time 02/04/94.

1            AN ACT Relating to partnerships; amending RCW 24.03.045, 24.03.047,  
2 24.06.045, 24.06.047, 25.10.020, 43.07.120, 43.07.130, 18.04.025, and  
3 18.04.195; reenacting and amending RCW 23B.04.010; adding a new chapter  
4 to Title 25 RCW; adding a new chapter to Title 18 RCW; and providing an  
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7    **ARTICLE I.    GENERAL PROVISIONS**

8            NEW SECTION.    **Sec. 101.**    DEFINITIONS.    As used in this chapter,  
9 unless the context otherwise requires:

10            (1) "Certificate of formation" means the certificate referred to in  
11 section 201 of this act, and the certificate as amended.

12            (2) "Event of dissociation" means an event that causes a person to  
13 cease to be a member as provided in section 304 of this act.

14            (3) "Foreign limited liability company" means an entity that is:

15            (a) An unincorporated enterprise;

16            (b) Organized under the laws of a state other than the laws of this  
17 state, or under the laws of any foreign country;

1 (c) Organized under a statute pursuant to which an enterprise may  
2 be formed that affords to each of its members limited liability with  
3 respect to the liabilities of the entity; and

4 (d) Is not required, in order to transact business or conduct  
5 affairs in this state, to be registered or organized under any statute  
6 of this state other than this chapter.

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

10 (5) "Limited liability company agreement" means any written  
11 agreement as to the affairs of a limited liability company and the  
12 conduct of its business which is binding upon all of the members.

13 (6) "Limited liability company interest" means a member's share of  
14 the profits and losses of a limited liability company and a member's  
15 right to receive distributions of the limited liability company's  
16 assets.

17 (7) "Manager" or "managers" means, with respect to a limited  
18 liability company that has set forth in its certificate of formation  
19 that it is to be managed by managers, the person, or persons designated  
20 in accordance with section 401(2) of this act.

21 (8) "Member" means a person who has been admitted to a limited  
22 liability company as a member as provided in section 301 of this act  
23 and who has not been dissociated from the limited liability company.

24 (9) "Person" means a natural person, partnership (whether general  
25 or limited and whether domestic or foreign), limited liability company,  
26 foreign limited liability company, trust, estate, association,  
27 corporation, custodian, nominee, or any other individual or entity in  
28 its own or any representative capacity.

29 (10) "Professional limited liability company" means a limited  
30 liability company which is organized for the purpose of rendering  
31 professional service and whose certificate of formation sets forth that  
32 it is a professional limited liability company subject to section 109  
33 of this act.

34 (11) "Professional service" means any type of personal service to  
35 the public which requires as a condition precedent to the rendering of  
36 such service the obtaining of a license or other legal authorization,  
37 including, but not by way of limitation, certified public accountants,  
38 architects, veterinarians, attorneys at law, and health professions  
39 regulated under chapter 18.130 RCW.

1 (12) "State" means the District of Columbia or the Commonwealth of  
2 Puerto Rico or any state, territory, possession, or other jurisdiction  
3 of the United States other than the state of Washington.

4 NEW SECTION. **Sec. 102.** NAME SET FORTH IN CERTIFICATE OF  
5 FORMATION. (1) The name of each limited liability company as set forth  
6 in its certificate of formation:

7 (a) Must contain either the words "Limited Liability Company," the  
8 words "Limited Liability" and abbreviation "Co.," or the abbreviation  
9 "L.L.C.";

10 (b) Except as provided in subsection (1)(d) of this section, may  
11 contain the name of a member or manager;

12 (c) Must not contain language stating or implying that the limited  
13 liability company is organized for a purpose other than those permitted  
14 by section 106 of this act;

15 (d) Must not contain any of the words or phrases: "Bank,"  
16 "banking," "banker," "trust," "cooperative," "partnership,"  
17 "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or  
18 "inc.," or "L.P.," or any combination of the words "industrial" and  
19 "loan," or any combination of any two or more of the words "building,"  
20 "savings," "loan," "home," "association," and "society," or any other  
21 words or phrases prohibited by any statute of this state; and

22 (e) Must be distinguishable upon the records of the secretary of  
23 state from the names described in RCW 23B.04.010(1)(d), and the names  
24 of any limited liability company reserved, registered, or formed under  
25 the laws of this state or qualified to do business as a foreign limited  
26 liability company in this state.

27 (2) A limited liability company may apply to the secretary of state  
28 for authorization to use any name which is not distinguishable upon the  
29 records of the secretary of state from one or more of the names  
30 described in subsection (1)(e) of this section. The secretary of state  
31 shall authorize use of the name applied for if the other corporation,  
32 limited partnership, or limited liability company consents in writing  
33 to the use and files with the secretary of state documents necessary to  
34 change its name or the name reserved or registered to a name that is  
35 distinguishable upon the records of the secretary of state from the  
36 name of the applying limited liability company.

37 (3) A name shall not be considered distinguishable upon the records  
38 of the secretary of state by virtue of:

1 (a) A variation in the designation, under subsection (1)(a) of this  
2 section, used for the same name;

3 (b) The addition or deletion of an article or conjunction such as  
4 "the" or "and" from the same name;

5 (c) Punctuation, capitalization, or special characters or symbols  
6 in the same name; or

7 (d) Use of abbreviation or the plural form of a word in the same  
8 name.

9 (4) This chapter does not control the use of assumed business names  
10 or "trade names."

11 NEW SECTION. **Sec. 103.** RESERVED NAME--REGISTERED NAME. (1)  
12 Reserved Name.

13 (a) A person may reserve the exclusive use of a limited liability  
14 company name by delivering an application to the secretary of state for  
15 filing. The application must set forth the name and address of the  
16 applicant and the name proposed to be reserved. If the secretary of  
17 state finds that the limited liability company name applied for is  
18 available, the secretary of state shall reserve the name for the  
19 applicant's exclusive use for a nonrenewable one hundred eighty-day  
20 period.

21 (b) The owner of a reserved limited liability company name may  
22 transfer the reservation to another person by delivering to the  
23 secretary of state a signed notice of the transfer that states the name  
24 and address of the transferee.

25 (2) Registered Name.

26 (a) A foreign limited liability company may register its name if  
27 the name is distinguishable upon the records of the secretary of state  
28 from the names specified in section 102(1)(e) of this act.

29 (b) A foreign limited liability company registers its name by  
30 delivering to the secretary of state for filing an application that:

31 (i) Sets forth its name and the state or country and date of its  
32 organization; and

33 (ii) Is accompanied by a certificate of existence, or a document of  
34 similar import, from the state or country of organization.

35 (c) The name is registered for the applicant's exclusive use upon  
36 the effective date of the application and until the close of the  
37 calendar year in which the application for registration is filed.

1 (d) A foreign limited liability company whose registration is  
2 effective may renew it for successive years by delivering to the  
3 secretary of state for filing a renewal application, which complies  
4 with the requirements of (b) of this subsection, between October 1st  
5 and December 31st of the preceding year. The renewal application when  
6 filed renews the registration for the following calendar year.

7 (e) A foreign limited liability company whose registration is  
8 effective may thereafter qualify as a foreign limited liability company  
9 under the registered name, or consent in writing to the use of that  
10 name by a limited liability company thereafter organized under this  
11 chapter, by a corporation thereafter formed under Title 23B RCW, by a  
12 limited partnership thereafter formed under chapter 25.10 RCW, or by  
13 another foreign limited liability company, foreign corporation, or  
14 foreign limited partnership thereafter authorized to transact business  
15 in this state. The registration terminates when the domestic limited  
16 liability company is organized, the domestic corporation is  
17 incorporated, or the domestic limited partnership is formed, or the  
18 foreign limited liability company qualifies or consents to the  
19 qualification of another foreign limited liability company,  
20 corporation, or limited partnership under the registered name.

21 NEW SECTION. **Sec. 104.** REGISTERED OFFICE--REGISTERED AGENT. (1)

22 Each limited liability company shall continuously maintain in this  
23 state:

24 (a) A registered office, which may but need not be a place of its  
25 business in this state. The registered office shall be at a specific  
26 geographic location in this state, and be identified by number, if any,  
27 and street, or building address or rural route, or, if a commonly known  
28 street or rural route address does not exist, by legal description. A  
29 registered office may not be identified by post office box number or  
30 other nongeographic address. For purposes of communicating by mail,  
31 the secretary of state may permit the use of a post office address in  
32 the same city as the registered office in conjunction with the  
33 registered office address if the limited liability company also  
34 maintains on file the specific geographic address of the registered  
35 office where personal service of process may be made;

36 (b) A registered agent for service of process on the limited  
37 liability company, which agent may be either an individual resident of  
38 this state whose business office is identical with the limited

1 liability company's registered office, or a domestic corporation,  
2 limited partnership, or limited liability company, or a foreign  
3 corporation, limited partnership, or limited liability company  
4 authorized to do business in this state having a business office  
5 identical with such registered office; and

6 (c) A registered agent who shall not be appointed without having  
7 given prior written consent to the appointment. The written consent  
8 shall be filed with the secretary of state in such form as the  
9 secretary may prescribe. The written consent shall be filed with or as  
10 a part of the document first appointing a registered agent.

11 (2) A registered agent may change the address of the registered  
12 office of the limited liability company or companies for which such  
13 registered agent is registered agent to another address in this state  
14 by filing with the secretary of state a certificate, executed by such  
15 registered agent, setting forth the names of all the limited liability  
16 companies represented by such registered agent, and the address at  
17 which such registered agent has maintained the registered office for  
18 each of such limited liability companies, and further certifying to the  
19 new address to which each such registered office will be changed on a  
20 given day, and at which new address such registered agent will  
21 thereafter maintain the registered office for each of the limited  
22 liability companies recited in the certificate. Upon the filing of  
23 such certificate, the secretary of state shall furnish to the  
24 registered agent a certified copy of the same, and thereafter, or until  
25 further change of address, as authorized by law, the registered office  
26 in this state of each of the limited liability companies recited in the  
27 certificate shall be located at the new address of the registered agent  
28 thereof as given in the certificate. In the event of a change of name  
29 of any person acting as a registered agent of a limited liability  
30 company, such registered agent shall file with the secretary of state  
31 a certificate, executed by such registered agent, setting forth the new  
32 name of such registered agent, the name of such registered agent before  
33 it was changed, the names of all the limited liability companies  
34 represented by such registered agent, and the address at which such  
35 registered agent has maintained the registered office for each of such  
36 limited liability companies. Upon the filing of such certificate, the  
37 secretary of state shall furnish to the registered agent a certified  
38 copy of the certificate. Filing a certificate under this section shall  
39 be deemed to be an amendment of the certificate of formation of each

1 limited liability company affected thereby and each such limited  
2 liability company shall not be required to take any further action with  
3 respect thereto, to amend its certificate of formation under section  
4 202 of this act. Any registered agent filing a certificate under this  
5 section shall promptly, upon such filing, deliver a copy of any such  
6 certificate to each limited liability company affected thereby.

7 (3) The registered agent of one or more limited liability companies  
8 may resign and appoint a successor registered agent by filing a  
9 certificate with the secretary of state, stating that it resigns and  
10 the name and address of the successor registered agent. There shall be  
11 attached to such certificate a statement executed by each affected  
12 limited liability company ratifying and approving such change of  
13 registered agent. Upon such filing, the successor registered agent  
14 shall become the registered agent of such limited liability companies  
15 as have ratified and approved such substitution and the successor  
16 registered agent's address, as stated in such certificate, shall become  
17 the address of each such limited liability company's registered office  
18 in this state. The secretary of state shall furnish to the successor  
19 registered agent a certified copy of the certificate of resignation.  
20 Filing of such certificate of resignation shall be deemed to be an  
21 amendment of the certificate of formation of each limited liability  
22 company affected thereby and each such limited liability company shall  
23 not be required to take any further action with respect thereto, to  
24 amend its certificate of formation under section 202 of this act.

25 (4) The registered agent of a limited liability company may resign  
26 without appointing a successor registered agent by filing a certificate  
27 with the secretary of state stating that it resigns as registered agent  
28 for the limited liability company identified in the certificate, but  
29 such resignation shall not become effective until one hundred twenty  
30 days after the certificate is filed. There shall be attached to such  
31 certificate an affidavit of such registered agent, that at least thirty  
32 days prior to and on or about the date of the filing of said  
33 certificate, notices were sent by certified or registered mail to the  
34 limited liability company for which such registered agent is resigning  
35 as registered agent, at the principal office thereof within or outside  
36 this state, if known to such registered agent or, if not, to the last  
37 known address of the attorney or other individual at whose request such  
38 registered agent was appointed for such limited liability company, of  
39 the resignation of such registered agent. After receipt of the notice

1 of the resignation of its registered agent, the limited liability  
2 company for which such registered agent was acting shall obtain and  
3 designate a new registered agent, to take the place of the registered  
4 agent so resigning.

5 NEW SECTION. **Sec. 105.** SERVICE OF PROCESS ON DOMESTIC LIMITED  
6 LIABILITY COMPANIES. (1) A limited liability company's registered  
7 agent is its agent for service of process, notice, or demand required  
8 or permitted by law to be served on the limited liability company.

9 (2) The secretary of state shall be an agent of a limited liability  
10 company upon whom any such process, notice, or demand may be served if:

11 (a) The limited liability company fails to appoint or maintain a  
12 registered agent in this state; or

13 (b) The registered agent cannot with reasonable diligence be found  
14 at the registered office.

15 (3) Service on the secretary of state of any such process, notice,  
16 or demand shall be made by delivering to and leaving with the secretary  
17 of state, or with any duly authorized clerk of the secretary of state's  
18 office, the process, notice, or demand. In the event any such process,  
19 notice, or demand is served on the secretary of state, the secretary of  
20 state shall immediately cause a copy thereof to be forwarded by  
21 certified mail, addressed to the limited liability company at its  
22 principal place of business as it appears on the records of the  
23 secretary of state. Any service so had on the secretary of state shall  
24 be returnable in not less than thirty days.

25 (4) The secretary of state shall keep a record of all processes,  
26 notices, and demands served upon the secretary of state under this  
27 section, and shall record therein the time of such service and the  
28 secretary of state's action with reference thereto.

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

33 NEW SECTION. **Sec. 106.** NATURE OF BUSINESS PERMITTED--POWERS. (1)  
34 Every limited liability company formed under this chapter may carry on  
35 any lawful business or activity unless a more limited purpose is set  
36 forth in the certificate of formation. A limited liability company may

1 not be formed under this chapter for the purposes of banking or  
2 engaging in business as an insurer.

3 (2) Unless this chapter, its certificate of formation, or its  
4 limited liability company agreement provides otherwise, a limited  
5 liability company has the same powers as an individual to do all things  
6 necessary or convenient to carry out its business and affairs.

7 NEW SECTION. **Sec. 107.** BUSINESS TRANSACTIONS OF MEMBER OR MANAGER  
8 WITH THE LIMITED LIABILITY COMPANY. Except as provided in a limited  
9 liability company agreement, a member or manager may lend money to, act  
10 as a surety, guarantor, or endorser for, guarantee or assume one or  
11 more specific obligations of, provide collateral for, and transact  
12 other business with a limited liability company and, subject to other  
13 applicable law, has the same rights and obligations with respect to any  
14 such matter as a person who is not a member or manager.

15 NEW SECTION. **Sec. 108.** LIMITATION OF LIABILITY AND  
16 INDEMNIFICATION. (1) The limited liability company agreement may  
17 contain provisions not inconsistent with law that:

18 (a) Eliminate or limit the personal liability of a member or  
19 manager to the limited liability company or its members for monetary  
20 damages for conduct as a member or manager, provided that such  
21 provisions shall not eliminate or limit the liability of a member or  
22 manager for acts or omissions that involve intentional misconduct or a  
23 knowing violation of law by a member or manager, for conduct of the  
24 member or manager, violating section 605 of this act, or for any  
25 transaction from which the member or manager will personally receive a  
26 benefit in money, property, or services to which the member or manager  
27 is not legally entitled; or

28 (b) Indemnify any member or manager from and against any judgments,  
29 settlements, penalties, fines, or expenses incurred in a proceeding to  
30 which an individual is a party because he or she is, or was, a member  
31 or a manager, provided that no such indemnity shall indemnify a member  
32 or a manager from or on account of acts or omissions of the member or  
33 manager finally adjudged to be intentional misconduct or a knowing  
34 violation of law by the member or manager, conduct of the member or  
35 manager adjudged to be in violation of section 605 of this act, or any  
36 transaction with respect to which it was finally adjudged that such

1 member or manager received a benefit in money, property, or services to  
2 which such member or manager was not legally entitled.

3 (2) To the extent that, at law or in equity, a member or manager  
4 has duties (including fiduciary duties) and liabilities relating  
5 thereto to a limited liability company or to another member or manager  
6 (a) any such member or manager acting under a limited liability company  
7 agreement shall not be liable to the limited liability company or to  
8 any such other member or manager for the member's or manager's good  
9 faith reliance on the provisions of the limited liability company  
10 agreement, and (b) the member's or manager's duties and liabilities may  
11 be expanded or restricted by provisions in a limited liability company  
12 agreement.

13 NEW SECTION. **Sec. 109.** PROFESSIONAL LIMITED LIABILITY COMPANIES.

14 (1) A person or group of persons licensed or otherwise legally  
15 authorized to render professional services within this state may  
16 organize and become a member or members of a professional limited  
17 liability company under the provisions of this chapter for the purposes  
18 of rendering professional service. A "professional limited liability  
19 company" is subject to all the provisions of chapter 18.100 RCW that  
20 apply to a professional corporation, and its managers, members, agents,  
21 and employees shall be subject to all the provisions of chapter 18.100  
22 RCW that apply to the directors, officers, shareholders, agents, or  
23 employees of a professional corporation, except as provided otherwise  
24 in this section. Nothing in this section prohibits a person duly  
25 licensed or otherwise legally authorized to render professional  
26 services in any jurisdiction other than this state from becoming a  
27 member of a professional limited liability company organized for the  
28 purpose of rendering the same professional services. Nothing in this  
29 section prohibits a professional limited liability company from  
30 rendering professional services outside this state through individuals  
31 who are not duly licensed or otherwise legally authorized to render  
32 such professional services within this state. Notwithstanding RCW  
33 18.100.065, persons engaged in a profession and otherwise meeting the  
34 requirements of this chapter may operate under this chapter as a  
35 professional limited liability company so long as:

36 (a) At least one manager of the company is duly licensed or  
37 otherwise legally authorized to practice the profession in this state;  
38 and

1 (b) Each resident manager or member in charge of an office of the  
2 company in this state and each resident manager or member personally  
3 engaged in this state in the practice of the profession is duly  
4 licensed or otherwise legally authorized to practice the profession in  
5 this state.

6 (2) If the company's members are required to be licensed to  
7 practice such profession, and the company fails to maintain for itself  
8 and for its members practicing in this state a policy of professional  
9 liability insurance, bond, or other evidence of financial  
10 responsibility of a kind designated by rule by the state insurance  
11 commissioner and in the amount of at least one million dollars or such  
12 greater amount as the state insurance commissioner may establish by  
13 rule for a licensed profession or for any specialty within a  
14 profession, taking into account the nature and size of the business,  
15 then the company's members shall be personally liable to the extent  
16 that, had such insurance, bond, or other evidence of responsibility  
17 been maintained, it would have covered the liability in question.

18 (3) For purposes of applying the provisions of chapter 18.100 RCW  
19 to a professional limited liability company, the terms "director" or  
20 "officer" shall mean manager, "shareholder" shall mean member,  
21 "corporation" shall mean professional limited liability company,  
22 "articles of incorporation" shall mean certificate of formation,  
23 "shares" or "capital stock" shall mean a limited liability company  
24 interest, "incorporator" shall mean the person who executes the  
25 certificate of formation, and "bylaws" shall mean the limited liability  
26 company agreement.

27 (4) The name of a professional limited liability company must  
28 contain either the words "Professional Limited Liability Company," or  
29 the words "Professional Limited Liability" and the abbreviation "Co.,"  
30 or the abbreviation "P.L.L.C." provided that the name of a professional  
31 limited liability company organized to render dental services shall  
32 contain the full names or surnames of all members and no other word  
33 than "chartered" or the words "professional services" or the  
34 abbreviation "P.L.L.C."

35 (5) Subject to the provisions in article VII of this chapter, the  
36 following may be a member of a professional limited liability company  
37 and may be the transferee of the interest of an ineligible person or  
38 deceased member of the professional limited liability company:

1 (a) A professional corporation, if its shareholders, directors, and  
2 its officers other than the secretary and the treasurer, are licensed  
3 or otherwise legally authorized to render the same specific  
4 professional services as the professional limited liability company;  
5 and

6 (b) Another professional limited liability company, if the managers  
7 and members of both professional limited liability companies are  
8 licensed or otherwise legally authorized to render the same specific  
9 professional services.

10 NEW SECTION. **Sec. 110.** MEMBER AGREEMENTS. In addition to  
11 agreeing among themselves with respect to the provisions of this  
12 chapter, the members of a limited liability company or professional  
13 limited liability company may agree among themselves to any otherwise  
14 lawful provision governing the company which is not in conflict with  
15 this chapter. Such agreements include, but are not limited to, buy-  
16 sell agreements among the members and agreements relating to expulsion  
17 of members.

18 NEW SECTION. **Sec. 111.** MEMBERSHIP RESIDENCY. Nothing in this  
19 chapter requires a limited liability company or a professional limited  
20 liability company to restrict membership to persons residing in or  
21 engaging in business in this state.

22 NEW SECTION. **Sec. 112.** PIERCING THE VEIL. Members of a limited  
23 liability company shall be personally liable for any act, debt,  
24 obligation, or liability of the limited liability company to the extent  
25 that shareholders of a Washington business corporation would be liable  
26 in analogous circumstances. In this regard, the court may consider the  
27 factors and policies set forth in established case law with regard to  
28 piercing the corporate veil.

29 **ARTICLE II. FORMATION: CERTIFICATE OF FORMATION, AMENDMENT,**  
30 **FILING AND EXECUTION**

31 NEW SECTION. **Sec. 201.** CERTIFICATE OF FORMATION. (1) In order to  
32 form a limited liability company, one or more persons must execute a

1 certificate of formation. The certificate of formation shall be filed  
2 in the office of the secretary of state and set forth:

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

4 (b) The address of the registered office and the name and address  
5 of the registered agent for service of process required to be  
6 maintained by section 104 of this act;

7 (c) The address of the principal place of business of the limited  
8 liability company;

9 (d) If the limited liability company is to have a specific date of  
10 dissolution, the latest date on which the limited liability company is  
11 to dissolve;

12 (e) If management of the limited liability company is vested in a  
13 manager or managers, a statement to that effect;

14 (f) Any other matters the members decide to include therein; and

15 (g) The name and address of each person executing the certificate  
16 of formation.

17 (2) Effect of filing:

18 (a) Unless a delayed effective date is specified, a limited  
19 liability company is formed when its certificate of formation is filed  
20 by the secretary of state. A delayed effective date for a certificate  
21 of formation may be no later than the ninetieth day after the date it  
22 is filed.

23 (b) The secretary of state's filing of the certificate of formation  
24 is conclusive proof that the persons executing the certificate  
25 satisfied all conditions precedent to the formation except in a  
26 proceeding by the state to cancel the certificate.

27 (c) A limited liability company formed under this chapter shall be  
28 a separate legal entity, the existence of which as a separate legal  
29 entity shall continue until cancellation of the limited liability  
30 company's certificate of formation.

31 NEW SECTION. **Sec. 202.** AMENDMENT TO CERTIFICATE OF FORMATION.

32 (1) A certificate of formation is amended by filing a certificate of  
33 amendment thereto with the secretary of state. The certificate of  
34 amendment shall set forth:

35 (a) The name of the limited liability company; and

36 (b) The amendment to the certificate of formation.

37 (2) A manager or, if there is no manager, then any member who  
38 becomes aware that any statement in a certificate of formation was

1 false when made, or that any matter described has changed making the  
2 certificate of formation false in any material respect, shall promptly  
3 amend the certificate of formation.

4 (3) A certificate of formation may be amended at any time for any  
5 other proper purpose.

6 (4) Unless otherwise provided in this chapter or unless a later  
7 effective date (which shall be a date not later than the ninetieth day  
8 after the date it is filed) is provided for in the certificate of  
9 amendment, a certificate of amendment shall be effective when filed by  
10 the secretary of state.

11 NEW SECTION. **Sec. 203.** CANCELLATION OF CERTIFICATE. A  
12 certificate of formation shall be canceled upon the effective date of  
13 the certificate of cancellation, or as provided in section 805 of this  
14 act, or upon the filing of articles of merger if the limited liability  
15 company is not the surviving or resulting entity in a merger. A  
16 certificate of cancellation shall be filed in the office of the  
17 secretary of state to accomplish the cancellation of a certificate of  
18 formation upon the dissolution and the completion of winding up of a  
19 limited liability company and shall set forth:

- 20 (1) The name of the limited liability company;  
21 (2) The date of filing of its certificate of formation;  
22 (3) The reason for filing the certificate of cancellation;  
23 (4) The future effective date (which shall be a date not later than  
24 the ninetieth day after the date it is filed) of cancellation if it is  
25 not to be effective upon the filing of the certificate; and  
26 (5) Any other information the person filing the certificate of  
27 cancellation determines.

28 NEW SECTION. **Sec. 204.** EXECUTION. (1) Each document required by  
29 this chapter to be filed in the office of the secretary of state shall  
30 be executed in the following manner:

- 31 (a) Each original certificate of formation must be signed by the  
32 person or persons forming the limited liability company;  
33 (b) A reservation of name may be signed by any person;  
34 (c) A transfer of reservation of name must be signed by the  
35 applicant for the reserved name;  
36 (d) A registration of name must be signed by any member or manager  
37 of the foreign limited liability company;

1 (e) A certificate of amendment or restatement must be signed by at  
2 least one manager, or by a member if management of the limited  
3 liability company is reserved to the members;

4 (f) A certificate of cancellation must be signed by the person or  
5 persons authorized to wind up the limited liability company's affairs  
6 pursuant to section 806(1) of this act;

7 (g) If a surviving domestic limited liability company is filing  
8 articles of merger, the articles of merger must be signed by at least  
9 one manager, or by a member if management of the limited liability  
10 company is reserved to the members, or if the articles of merger are  
11 being filed by a surviving foreign limited liability company, limited  
12 partnership, or corporation, the articles of merger must be signed by  
13 a person authorized by such foreign limited liability company, limited  
14 partnership, or corporation; and

15 (h) A foreign limited liability company's application for  
16 registration as a foreign limited liability company doing business  
17 within the state must be signed by any member or manager of the foreign  
18 limited liability company.

19 (2) Any person may sign a certificate, articles of merger, or  
20 limited liability company agreement by an attorney-in-fact, so long as  
21 each document signed in such manner identifies the capacity in which  
22 the signator signed.

23 (3) The person executing the document shall sign it and state  
24 beneath or opposite the signature the name of the person and capacity  
25 in which the person signs. The document must be typewritten or  
26 printed, and must meet such legibility or other standards as may be  
27 prescribed by the secretary of state.

28 (4) The execution of a certificate or articles of merger by any  
29 person constitutes an affirmation under the penalties of perjury that  
30 the facts stated therein are true.

31 NEW SECTION. **Sec. 205.** EXECUTION, AMENDMENT, OR CANCELLATION BY  
32 JUDICIAL ORDER. (1) If a person required to execute a certificate  
33 required by this chapter fails or refuses to do so, any other person  
34 who is adversely affected by the failure or refusal may petition the  
35 superior courts to direct the execution of the certificate. If the  
36 court finds that the execution of the certificate is proper and that  
37 any person so designated has failed or refused to execute the

1 certificate, it shall order the secretary of state to record an  
2 appropriate certificate.

3 (2) If a person required to execute a limited liability company  
4 agreement or amendment thereof fails or refuses to do so, any other  
5 person who is adversely affected by the failure or refusal may petition  
6 the superior courts to direct the execution of the limited liability  
7 company agreement or amendment thereof. If the court finds that the  
8 limited liability company agreement or amendment thereof should be  
9 executed and that any person required to execute the limited liability  
10 company agreement or amendment thereof has failed or refused to do so,  
11 it shall enter an order granting appropriate relief.

12 NEW SECTION. **Sec. 206.** FILING. (1) The original signed copy,  
13 together with a duplicate copy that may be either a signed,  
14 photocopied, or conformed copy, of the certificate of formation or any  
15 other document required to be filed pursuant to this chapter shall be  
16 delivered to the secretary of state. If the secretary of state  
17 determines that the documents conform to the filing provisions of this  
18 chapter, he or she shall, when all required filing fees have been paid:

19 (a) Endorse on each signed original and duplicate copy the word  
20 "filed" and the date of its acceptance for filing;

21 (b) Retain the signed original in the secretary of state's files;  
22 and

23 (c) Return the duplicate copy to the person who filed it or the  
24 person's representative.

25 (2) If the secretary of state is unable to make the determination  
26 required for filing by subsection (1) of this section at the time any  
27 documents are delivered for filing, the documents are deemed to have  
28 been filed at the time of delivery if the secretary of state  
29 subsequently determines that:

30 (a) The documents as delivered conform to the filing provisions of  
31 this chapter; or

32 (b) Within twenty days after notification of nonconformance is  
33 given by the secretary of state to the person who delivered the  
34 documents for filing or the person's representative, the documents are  
35 brought into conformance.

36 (3) If the filing and determination requirements of this chapter  
37 are not satisfied completely within the time prescribed in subsection  
38 (2)(b) of this section, the documents shall not be filed.

1 (4) Upon the filing of a certificate of amendment (or judicial  
2 decree of amendment) or restated certificate in the office of the  
3 secretary of state, or upon the future effective date or time of a  
4 certificate of amendment (or judicial decree thereof) or restated  
5 certificate, as provided for therein, the certificate of formation  
6 shall be amended or restated as set forth therein. Upon the filing of  
7 a certificate of cancellation (or a judicial decree thereof), or  
8 articles of merger which act as a certificate of cancellation, or upon  
9 the future effective date or time of a certificate of cancellation (or  
10 a judicial decree thereof) or of articles of merger which act as a  
11 certificate of cancellation, as provided for therein, or as specified  
12 in section 805 of this act, the certificate of formation is canceled.

13 NEW SECTION. **Sec. 207.** RESTATED CERTIFICATE. (1) A limited  
14 liability company may, whenever desired, integrate into a single  
15 instrument all of the provisions of its certificate of formation which  
16 are then in effect and operative as a result of there having  
17 theretofore been filed with the secretary of state one or more  
18 certificates or other instruments pursuant to any of the sections  
19 referred to in this chapter and it may at the same time also further  
20 amend its certificate of formation by adopting a restated certificate  
21 of formation.

22 (2) If a restated certificate of formation merely restates and  
23 integrates but does not amend the initial certificate of formation, as  
24 theretofore amended or supplemented by any instrument that was executed  
25 and filed pursuant to any of the sections in this chapter, it shall be  
26 specifically designated in its heading as a "Restated Certificate of  
27 Formation" together with such other words as the limited liability  
28 company may deem appropriate and shall be executed by at least one  
29 manager, or by a member if management of the limited liability company  
30 is reserved to its members, and filed as provided in section 206 of  
31 this act in the office of the secretary of state. If a restated  
32 certificate restates and integrates and also amends in any respect the  
33 certificate of formation, as theretofore amended or supplemented, it  
34 shall be specifically designated in its heading as an "Amended and  
35 Restated Certificate of Formation" together with such other words as  
36 the limited liability company may deem appropriate and shall be  
37 executed by at least one manager, or by a member if management of the  
38 limited liability company is reserved to its members, and filed as

1 provided in section 206 of this act in the office of the secretary of  
2 state.

3 (3) A restated certificate of formation shall state, either in its  
4 heading or in an introductory paragraph, the limited liability  
5 company's present name, and, if it has been changed, the name under  
6 which it was originally filed, and the date of filing of its original  
7 certificate of formation with the secretary of state, and the future  
8 effective date (which shall be a date not later than the ninetieth day  
9 after the date it is filed) of the restated certificate if it is not to  
10 be effective upon the filing of the restated certificate. A restated  
11 certificate shall also state that it was duly executed and is being  
12 filed in accordance with this section. If a restated certificate only  
13 restates and integrates and does not further amend a limited liability  
14 company's certificate of formation as theretofore amended or  
15 supplemented and there is no discrepancy between those provisions and  
16 the restated certificate, it shall state that fact as well.

17 (4) Upon the filing of a restated certificate of formation with the  
18 secretary of state, or upon the future effective date or time of a  
19 restated certificate of formation as provided for therein, the initial  
20 certificate of formation, as theretofore amended or supplemented, shall  
21 be superseded; thenceforth, the restated certificate of formation,  
22 including any further amendment or changes made thereby, shall be the  
23 certificate of formation of the limited liability company, but the  
24 original effective date of formation shall remain unchanged.

25 (5) Any amendment or change effected in connection with the  
26 restatement and integration of the certificate of formation shall be  
27 subject to any other provision of this chapter, not inconsistent with  
28 this section, which would apply if a separate certificate of amendment  
29 were filed to effect such amendment or change.

30 NEW SECTION. **Sec. 208.** (1) Each domestic limited liability  
31 company, and each foreign limited liability company authorized to  
32 transact business in this state, shall deliver to the secretary of  
33 state for filing, both initial and annual reports that set forth:

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

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

1 (c) In the case of a foreign company, the address of its principal  
2 office in the state or country under the laws of which it is organized;

3 (d) The address of the principal place of business of the company  
4 in this state;

5 (e) The names and addresses of the company's members, or if the  
6 management of the company is vested in a manager or managers, then the  
7 name and address of its manager or managers; and

8 (f) A brief description of the nature of its business.

9 (2) Information in an initial report or an annual report must be  
10 current as of the date the report is executed on behalf of the company.

11 (3) A company's initial report must be delivered to the secretary  
12 of state within one hundred twenty days of the date on which a domestic  
13 company's certificate of formation was filed, or on which a foreign  
14 company's application for registration was submitted. Subsequent  
15 annual reports must be delivered to the secretary of state on a date  
16 determined by the secretary of state, and at such additional times as  
17 the company elects.

### 18 ARTICLE III. MEMBERS

19 NEW SECTION. **Sec. 301.** ADMISSION OF MEMBERS. (1) In connection  
20 with the formation of a limited liability company, a person acquiring  
21 a limited liability company interest is admitted as a member of the  
22 limited liability company upon the later to occur of:

23 (a) The formation of the limited liability company; or

24 (b) The time provided in and upon compliance with the limited  
25 liability company agreement or, if the limited liability company  
26 agreement does not so provide or does not exist, when the person's  
27 admission is reflected in the records of the limited liability company.

28 (2) After the formation of a limited liability company, a person  
29 acquiring a limited liability company interest is admitted as a member  
30 of the limited liability company:

31 (a) In the case of a person acquiring a limited liability company  
32 interest directly from the limited liability company, at the time  
33 provided in and upon compliance with the limited liability company  
34 agreement or, if the limited liability company agreement does not so  
35 provide or does not exist, upon the consent of all members and when the

1 person's admission is reflected in the records of the limited liability  
2 company; or

3 (b) In the case of an assignee of a limited liability company  
4 interest who meets the conditions for membership set forth in section  
5 704(1) of this act, at the time provided in and upon compliance with  
6 the limited liability company agreement or, if the limited liability  
7 company agreement does not so provide or does not exist, when any such  
8 assignee's admission as a member is reflected in the records of the  
9 limited liability company.

10 NEW SECTION. **Sec. 302.** VOTING AND CLASSES OF MEMBERSHIP. (1)  
11 Except as provided in this chapter, or in the limited liability company  
12 agreement, and subject to subsection (2) of this section, the  
13 affirmative vote, approval, or consent of members contributing, or  
14 required to contribute, more than fifty percent of the agreed value (as  
15 stated in the records of the limited liability company required to be  
16 kept pursuant to section 305 of this act) of the contributions made, or  
17 required to be made, by all members shall be necessary for actions  
18 requiring member approval.

19 (2) Except as provided in the limited liability company agreement,  
20 the affirmative vote, approval, or consent of all members shall be  
21 required to:

22 (a) Amend the limited liability company agreement; or

23 (b) Authorize a manager, member, or other person to do any act on  
24 behalf of the limited liability company that contravenes the limited  
25 liability company agreement, including any provision thereof which  
26 expressly limits the purpose, business, or affairs of the limited  
27 liability company or the conduct thereof.

28 (3) A limited liability company agreement may provide for classes  
29 or groups of members having such relative rights, powers, and duties as  
30 the limited liability company agreement may provide, and may make  
31 provision for the future creation in the manner provided in the limited  
32 liability company agreement of additional classes or groups of members  
33 having such relative rights, powers, and duties as may from time to  
34 time be established, including rights, powers, and duties senior to  
35 existing classes and groups of members. A limited liability company  
36 agreement may provide for the taking of an action, including the  
37 amendment of the limited liability company agreement, without the vote  
38 or approval of any member or class or group of members, including an

1 action to create under the provisions of the limited liability company  
2 agreement a class or group of limited liability company interests that  
3 was not previously outstanding.

4 (4) A limited liability company agreement may grant to all or  
5 certain identified members or a specified class or group of the members  
6 the right to vote separately or with all or any class or group of the  
7 members or managers, on any matter. If the limited liability company  
8 agreement so provides, voting by members may be on a per capita,  
9 number, profit share, class, group, or any other basis.

10 (5) A limited liability company agreement which contains provisions  
11 related to voting rights of members may set forth provisions relating  
12 to notice of the time, place, or purpose of any meeting at which any  
13 matter is to be voted on by any members, waiver of any such notice,  
14 action by consent without a meeting, the establishment of a record  
15 date, quorum requirements, voting in person or by proxy, or any other  
16 matter with respect to the exercise of any such right to vote.

17 NEW SECTION. **Sec. 303.** LIABILITY OF MEMBERS AND MANAGERS TO THIRD  
18 PARTIES. (1) Except as otherwise provided by this chapter, the debts,  
19 obligations, and liabilities of a limited liability company, whether  
20 arising in contract, tort or otherwise, shall be solely the debts,  
21 obligations, and liabilities of the limited liability company; and no  
22 member or manager of a limited liability company shall be obligated  
23 personally for any such debt, obligation, or liability of the limited  
24 liability company solely by reason of being a member or acting as a  
25 manager of the limited liability company.

26 (2) A member or manager of a limited liability company is  
27 personally liable for his or her own torts.

28 NEW SECTION. **Sec. 304.** EVENTS OF DISSOCIATION. (1) A person  
29 ceases to be a member of a limited liability company upon the  
30 occurrence of one or more of the following events:

31 (a) The member withdraws by voluntary act from the limited  
32 liability company as provided in subsection (3) of this section;

33 (b) The member ceases to be a member as provided in section  
34 702(2)(b) of this act following an assignment of all the member's  
35 limited liability company interest;

36 (c) The member is removed as a member in accordance with the  
37 limited liability company agreement;

1 (d) Unless otherwise provided in the limited liability company  
2 agreement, or with the written consent of all other members at the  
3 time, the member (i) makes a general assignment for the benefit of  
4 creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes  
5 the subject of an order for relief in bankruptcy proceedings; (iv)  
6 files a petition or answer seeking for himself or herself any  
7 reorganization, arrangement, composition, readjustment, liquidation,  
8 dissolution, or similar relief under any statute, law, or regulation;  
9 (v) files an answer or other pleading admitting or failing to contest  
10 the material allegations of a petition filed against him or her in any  
11 proceeding of the nature described in (d) (i) through (iv) of this  
12 subsection; or (vi) seeks, consents to, or acquiesces in the  
13 appointment of a trustee, receiver, or liquidator of the member or of  
14 all or any substantial part of the member's properties;

15 (e) Unless otherwise provided in the limited liability company  
16 agreement, or with the consent of all other members at the time, one  
17 hundred twenty days after the commencement of any proceeding against  
18 the member seeking reorganization, arrangement, composition,  
19 readjustment, liquidation, dissolution, or similar relief under any  
20 statute, law, or regulation, the proceeding has not been dismissed, or  
21 if within ninety days after the appointment without his or her consent  
22 or acquiescence of a trustee, receiver, or liquidator of the member or  
23 of all or any substantial part of the member's properties, the  
24 appointment is not vacated or stayed, or within ninety days after the  
25 expiration of any stay, the appointment is not vacated;

26 (f) Unless otherwise provided in the limited liability company  
27 agreement, or with written consent of all other members at the time, in  
28 the case of a member who is an individual, the entry of an order by a  
29 court of competent jurisdiction adjudicating the member incompetent to  
30 manage his or her person or estate;

31 (g) Unless otherwise provided in the limited liability company  
32 agreement, or with written consent of all other members at the time, in  
33 the case of a member that is another limited liability company, the  
34 dissolution and commencement of winding up of such limited liability  
35 company;

36 (h) Unless otherwise provided in the limited liability company  
37 agreement, or with written consent of all other members at the time, in  
38 the case of a member that is a corporation, the filing of articles of  
39 dissolution or the equivalent for the corporation or the administrative

1 dissolution of the corporation and the lapse of any period authorized  
2 for application for reinstatement; or

3 (i) Unless otherwise provided in the limited liability company  
4 agreement, or with written consent of all other members at the time, in  
5 the case of a member that is a limited partnership, the dissolution and  
6 commencement of winding up of such limited partnership.

7 (2) The limited liability company agreement may provide for other  
8 events the occurrence of which result in a person ceasing to be a  
9 member of the limited liability company.

10 (3) Unless otherwise provided in the limited liability company  
11 agreement, a member may withdraw from a limited liability company at  
12 any time by giving thirty days' written notice to the other members.

13 NEW SECTION. **Sec. 305.** RECORDS AND INFORMATION. (1) A limited  
14 liability company shall keep at its principal place of business the  
15 following:

16 (a) A current and a past list, setting forth the full name and last  
17 known mailing address of each member and manager, if any;

18 (b) A copy of its certificate of formation and all amendments  
19 thereto;

20 (c) A copy of its current limited liability company agreement and  
21 all amendments thereto, and a copy of any prior agreements no longer in  
22 effect;

23 (d) Unless contained in its certificate of formation or limited  
24 liability company agreement, a written statement of:

25 (i) The amount of cash and a description of the agreed value of the  
26 other property or services contributed by each member (including that  
27 member's predecessors in interest), and which each member has agreed to  
28 contribute;

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

32 (iii) Any right of any member to receive distributions which  
33 include a return of all or any part of the member's contribution.

34 (e) A copy of the limited liability company's federal, state, and  
35 local tax returns and reports, if any, for the three most recent years;  
36 and

37 (f) A copy of any financial statements of the limited liability  
38 company for the three most recent years.

1 (2) The records required by subsection (1) of this section to be  
2 kept by a limited liability company are subject to inspection and  
3 copying at the reasonable request, and at the expense, of any member  
4 during ordinary business hours. A member's agent or attorney has the  
5 same inspection and copying rights as the member.

6 (3) Each manager shall have the right to examine all of the  
7 information described in subsection (1) of this section for a purpose  
8 reasonably related to his or her position as a manager.

9 (4) A limited liability company may maintain its records in other  
10 than a written form if such form is capable of conversion into written  
11 form within a reasonable time.

12 (5) Any action to enforce any right arising under this section  
13 shall be brought in the superior courts.

14 NEW SECTION. **Sec. 306.** REMEDIES FOR BREACH OF LIMITED LIABILITY  
15 COMPANY AGREEMENT BY MEMBER. A limited liability company agreement may  
16 provide that (1) a member who fails to perform in accordance with, or  
17 to comply with the terms and conditions of, the limited liability  
18 company agreement shall be subject to specified penalties or specified  
19 consequences, and (2) at the time or upon the happening of events  
20 specified in the limited liability company agreement, a member shall be  
21 subject to specified penalties or specified consequences.

#### 22 **ARTICLE IV. MANAGEMENT AND MANAGERS**

23 NEW SECTION. **Sec. 401.** MANAGEMENT. (1) Unless the certificate of  
24 formation vests management of the limited liability company in a  
25 manager or managers, management of the business or affairs of the  
26 limited liability company shall be vested in the members. Subject to  
27 any provisions in the limited liability company agreement or this  
28 chapter restricting or enlarging the management rights and duties of  
29 any person or group or class of persons, the members shall have the  
30 right and authority to manage the affairs of the limited liability  
31 company and to make all decisions with respect thereto.

32 (2) If the certificate of formation vests management of the limited  
33 liability company in one or more managers, then such persons shall have  
34 such power to manage the business or affairs of the limited liability  
35 company as is provided in the limited liability company agreement.

1 Unless otherwise provided in the limited liability company agreement,  
2 such persons:

3 (a) Shall be designated, appointed, elected, removed, or replaced  
4 by a vote, approval, or consent of members contributing, or required to  
5 contribute, more than fifty percent of the agreed value (as stated in  
6 the records of the limited liability company required to be kept  
7 pursuant to section 305 of this act) of the contributions made, or  
8 required to be made, by all members at the time of such action;

9 (b) Need not be members of the limited liability company or natural  
10 persons; and

11 (c) Unless they have been earlier removed or have earlier resigned,  
12 shall hold office until their successors shall have been elected and  
13 qualified.

14 (3) If the certificate of formation vests management of the limited  
15 liability company in a manager or managers, no member, acting solely in  
16 the capacity as a member, is an agent of the limited liability company.

17 NEW SECTION. **Sec. 402.** LIABILITY OF MANAGERS AND MEMBERS. Unless  
18 otherwise provided in the limited liability company agreement:

19 (1) A member or manager shall not be liable, responsible, or  
20 accountable in damages or otherwise to the limited liability company or  
21 to the members of the limited liability company for any action taken or  
22 failure to act on behalf of the limited liability company unless such  
23 act or omission constitutes gross negligence, intentional misconduct,  
24 or a knowing violation of law.

25 (2) Every member and manager must account to the limited liability  
26 company and hold as trustee for it any profit or benefit derived by him  
27 or her without the consent of a majority of the disinterested managers  
28 or members, or other persons participating in the management of the  
29 business or affairs of the limited liability company from (a) any  
30 transaction connected with the conduct or winding up of the limited  
31 liability company or (b) any use by him or her of its property,  
32 including, but not limited to, confidential or proprietary information  
33 of the limited liability company or other matters entrusted to him or  
34 her as a result of his or her status as manager or member.

35 NEW SECTION. **Sec. 403.** MANAGER-MEMBERS' RIGHTS AND DUTIES. A  
36 person who is both a manager and a member has the rights and powers,  
37 and is subject to the restrictions and liabilities, of a manager and,

1 except as provided in a limited liability company agreement, also has  
2 the rights and powers, and is subject to the restrictions and  
3 liabilities, of a member to the extent of his or her participation in  
4 the limited liability company as a member.

5 NEW SECTION. **Sec. 404.** VOTING AND CLASSES OF MANAGERS. (1)

6 Unless the limited liability company agreement provides otherwise, the  
7 affirmative vote, approval, or consent of more than one-half by number  
8 of the managers shall be required to decide any matter connected with  
9 the business and affairs of the limited liability company.

10 (2) A limited liability company agreement may provide for classes  
11 or groups of managers having such relative rights, powers, and duties  
12 as the limited liability company agreement may provide, and may make  
13 provision for the future creation in the manner provided in the limited  
14 liability company agreement of additional classes or groups of managers  
15 having such relative rights, powers, and duties as may from time to  
16 time be established, including rights, powers, and duties senior to  
17 existing classes and groups of managers. A limited liability company  
18 agreement may provide for the taking of an action, including the  
19 amendment of the limited liability company agreement, without the vote  
20 or approval of any manager or class or group of managers, including an  
21 action to create under the provisions of the limited liability company  
22 agreement a class or group of limited liability company interests that  
23 was not previously outstanding.

24 (3) A limited liability company agreement may grant to all or  
25 certain identified managers or a specified class or group of the  
26 managers the right to vote, separately or with all or any class or  
27 group of managers or members, on any matter. If the limited liability  
28 company agreement so provides, voting by managers may be on a financial  
29 interest, class, group, or any other basis.

30 (4) A limited liability company agreement which contains provisions  
31 related to voting rights of managers may set forth provisions relating  
32 to notice of the time, place, or purpose of any meeting at which any  
33 matter is to be voted on by any manager or class or group of managers,  
34 waiver of any such notice, action by consent without a meeting, the  
35 establishment of a record date, quorum requirements, voting in person  
36 or by proxy, or any other matter with respect to the exercise of any  
37 such right to vote.

1        NEW SECTION.    **Sec. 405.**    REMEDIES FOR BREACH OF LIMITED LIABILITY  
2 COMPANY AGREEMENT BY MANAGER.    A limited liability company agreement  
3 may provide that (1) a manager who fails to perform in accordance with,  
4 or to comply with the terms and conditions of, the limited liability  
5 company agreement shall be subject to specified penalties or specified  
6 consequences, and (2) at the time or upon the happening of events  
7 specified in the limited liability company agreement, a manager shall  
8 be subject to specified penalties or specified consequences.

9        NEW SECTION.    **Sec. 406.**    RELIANCE ON REPORTS AND INFORMATION BY  
10 MEMBER OR MANAGER.    In discharging the duties of a manager or a member,  
11 a member or manager of a limited liability company is entitled to rely  
12 in good faith upon the records of the limited liability company and  
13 upon such information, opinions, reports, or statements presented to  
14 the limited liability company by any of its other managers, members,  
15 officers, employees, or committees of the limited liability company, or  
16 by any other person, as to matters the member or manager reasonably  
17 believes are within such other person's professional or expert  
18 competence and who has been selected with reasonable care by or on  
19 behalf of the limited liability company, including information,  
20 opinions, reports, or statements as to the value and amount of the  
21 assets, liabilities, profits, or losses of the limited liability  
22 company or any other facts pertinent to the existence and amount of  
23 assets from which distributions to members might properly be paid.

24        NEW SECTION.    **Sec. 407.**    RESIGNATION OF MANAGER.    A manager may  
25 resign as a manager of a limited liability company at the time or upon  
26 the happening of events specified in a limited liability company  
27 agreement and in accordance with the limited liability company  
28 agreement.    A limited liability company agreement may provide that a  
29 manager shall not have the right to resign as a manager of a limited  
30 liability company.    Notwithstanding that a limited liability company  
31 agreement provides that a manager does not have the right to resign as  
32 a manager of a limited liability company, a manager may resign as a  
33 manager of a limited liability company at any time by giving written  
34 notice to the members and other managers.    If the resignation of a  
35 manager violates a limited liability company agreement, in addition to  
36 any remedies otherwise available under applicable law, a limited  
37 liability company may recover from the resigning manager damages for

1 breach of the limited liability company agreement and offset the  
2 damages against the amount otherwise distributable to the resigning  
3 manager.

4

#### ARTICLE V. FINANCE

5 NEW SECTION. **Sec. 501.** FORM OF CONTRIBUTION. The contribution of  
6 a member to a limited liability company may be made in cash, property  
7 or services rendered, or a promissory note or other obligation to  
8 contribute cash or property or to perform services.

9 NEW SECTION. **Sec. 502.** LIABILITY FOR CONTRIBUTION. (1) Except as  
10 provided in a limited liability company agreement, a member is  
11 obligated to a limited liability company to perform any promise to  
12 contribute cash or property or to perform services, even if the member  
13 is unable to perform because of death, disability, or any other reason.  
14 If a member does not make the required contribution of property or  
15 services, the member is obligated at the option of the limited  
16 liability company to contribute cash equal to that portion of the  
17 agreed value (as stated in the records of the limited liability company  
18 required to be kept pursuant to section 305 of this act) of the  
19 contribution that has not been made. This option shall be in addition  
20 to, and not in lieu of, any other rights, including the right to  
21 specific performance, that the limited liability company may have  
22 against such member under the limited liability company agreement or  
23 applicable law.

24 (2) Unless otherwise provided in a limited liability company  
25 agreement, the obligation of a member to make a contribution or return  
26 money or other property paid or distributed in violation of this  
27 chapter may be compromised only by consent of all the members.  
28 Notwithstanding the compromise, a creditor of a limited liability  
29 company who extends credit, after either the certificate of formation,  
30 limited liability company agreement or an amendment thereto, or records  
31 required to be kept under section 305 of this act reflect the  
32 obligation, and before the amendment of any thereof to reflect the  
33 compromise, may enforce the original obligation to the extent that, in  
34 extending credit, the creditor reasonably relied on the obligation of  
35 a member to make a contribution or return. A conditional obligation of

1 a member to make a contribution or return money or other property to a  
2 limited liability company may not be enforced unless the conditions of  
3 the obligation have been satisfied or waived as to or by such member.  
4 Conditional obligations include contributions payable upon a  
5 discretionary call of a limited liability company prior to the time the  
6 call occurs.

7 (3) A limited liability company agreement may provide that the  
8 interest of any member who fails to make any contribution that the  
9 member is obligated to make shall be subject to specified penalties  
10 for, or specified consequences of, such failure. Such penalty or  
11 consequence may take the form of reducing or eliminating the defaulting  
12 member's proportionate interest in a limited liability company,  
13 subordinating the member's limited liability company interest to that  
14 of nondefaulting members, a forced sale of the member's limited  
15 liability company interest, forfeiture of the member's limited  
16 liability company interest, the lending by other members of the amount  
17 necessary to meet the member's commitment, a fixing of the value of the  
18 member's limited liability company interest by appraisal or by formula  
19 and redemption or sale of the member's limited liability company  
20 interest at such value, or other penalty or consequence.

21 NEW SECTION. **Sec. 503.** ALLOCATION OF PROFITS AND LOSSES. The  
22 profits and losses of a limited liability company shall be allocated  
23 among the members, and among classes or groups of members, in the  
24 manner provided in a limited liability company agreement. If the  
25 limited liability company agreement does not so provide, profits and  
26 losses shall be allocated in proportion to the agreed value (as stated  
27 in the records of the limited liability company required to be kept  
28 pursuant to section 305 of this act) of the contributions made, or  
29 required to be made, by each member.

30 NEW SECTION. **Sec. 504.** ALLOCATION OF DISTRIBUTIONS.  
31 Distributions of cash or other assets of a limited liability company  
32 shall be allocated among the members, and among classes or groups of  
33 members, in the manner provided in a limited liability company  
34 agreement. If the limited liability company agreement does not so  
35 provide, distributions shall be made in proportion to the agreed value  
36 (as stated in the records of the limited liability company required to

1 be kept pursuant to section 305 of this act) of the contributions made,  
2 or required to be made, by each member.

3 **ARTICLE VI. DISTRIBUTIONS AND RESIGNATION**

4 NEW SECTION. **Sec. 601.** INTERIM DISTRIBUTIONS. Except as provided  
5 in this article, to the extent and at the times or upon the happening  
6 of the events specified in a limited liability company agreement, a  
7 member is entitled to receive from a limited liability company  
8 distributions before the member's dissociation from the limited  
9 liability company and before the dissolution and winding up thereof.

10 NEW SECTION. **Sec. 602.** DISTRIBUTION ON EVENT OF DISSOCIATION.  
11 Upon the occurrence of an event of dissociation under section 304 of  
12 this act which does not cause dissolution (other than an event of  
13 dissociation specified in section 304(2) of this act where the  
14 dissociating member's assignee is admitted as a member), a dissociating  
15 member (or the member's assignee) is entitled to receive any  
16 distribution to which the member (or assignee) is entitled under the  
17 limited liability company agreement and, if not otherwise provided in  
18 a limited liability company agreement, the member (or the member's  
19 assignee) is entitled to receive, within a reasonable time after  
20 dissociation, the fair value of the member's limited liability company  
21 interest as of the date of the dissociation based upon the member's  
22 right to share in distributions from the limited liability company.

23 NEW SECTION. **Sec. 603.** DISTRIBUTION IN-KIND. Except as provided  
24 in a limited liability company agreement, a member, regardless of the  
25 nature of the member's contribution, has no right to demand and receive  
26 any distribution from a limited liability company in any form other  
27 than cash. Except as provided in a limited liability company  
28 agreement, a member may not be compelled to accept a distribution of  
29 any asset in-kind from a limited liability company to the extent that  
30 the percentage of the asset distributed to the member exceeds a  
31 percentage of that asset which is equal to the percentage in which he  
32 or she shares in distributions from the limited liability company.

1        NEW SECTION.     **Sec. 604.**     RIGHT TO DISTRIBUTION.     Subject to  
2 sections 605 and 807 of this act, and unless otherwise provided in a  
3 limited liability company agreement; at the time a member becomes  
4 entitled to receive a distribution, he or she has the status of, and is  
5 entitled to all remedies available to, a creditor of a limited  
6 liability company with respect to the distribution.     A limited  
7 liability company agreement may provide for the establishment of a  
8 record date with respect to allocations and distributions by a limited  
9 liability company.

10       NEW SECTION.     **Sec. 605.**     LIMITATIONS ON DISTRIBUTION.     (1) A  
11 limited liability company shall not make a distribution to a member to  
12 the extent that at the time of the distribution, after giving effect to  
13 the distribution (a) the limited liability company would not be able to  
14 pay its debts as they became due in the usual course of business, or  
15 (b) all liabilities of the limited liability company, other than  
16 liabilities to members on account of their limited liability company  
17 interests and liabilities for which the recourse of creditors is  
18 limited to specified property of the limited liability company, exceed  
19 the fair value of the assets of the limited liability company, except  
20 that the fair value of property that is subject to a liability for  
21 which the recourse of creditors is limited shall be included in the  
22 assets of the limited liability company only to the extent that the  
23 fair value of that property exceeds that liability.

24       (2) A member who receives a distribution in violation of subsection  
25 (1) of this section, and who knew at the time of the distribution that  
26 the distribution violated subsection (1) of this section, shall be  
27 liable to a limited liability company for the amount of the  
28 distribution.     A member who receives a distribution in violation of  
29 subsection (1) of this section, and who did not know at the time of the  
30 distribution that the distribution violated subsection (1) of this  
31 section, shall not be liable for the amount of the distribution.  
32 Subject to subsection (3) of this section, this subsection (2) shall  
33 not affect any obligation or liability of a member under a limited  
34 liability company agreement or other applicable law for the amount of  
35 a distribution.

36       (3) Unless otherwise agreed, a member who receives a distribution  
37 from a limited liability company shall have no liability under this  
38 chapter or other applicable law for the amount of the distribution

1 after the expiration of three years from the date of the distribution  
2 unless an action to recover the distribution from such member is  
3 commenced prior to the expiration of the said three-year period and an  
4 adjudication of liability against such member is made in the said  
5 action.

6                   **ARTICLE VII. ASSIGNMENT OF LIMITED LIABILITY**  
7                   **COMPANY INTERESTS**

8           NEW SECTION.   **Sec. 701.**   NATURE OF LIMITED LIABILITY COMPANY  
9 INTEREST--CERTIFICATE OF INTEREST. (1) A limited liability company  
10 interest is personal property. A member has no interest in specific  
11 limited liability company property.

12           (2) A limited liability company agreement may provide that a  
13 member's interest in a limited liability company may be evidenced by a  
14 certificate of limited liability company interest issued by the limited  
15 liability company.

16           NEW SECTION.   **Sec. 702.**   ASSIGNMENT OF LIMITED LIABILITY COMPANY  
17 INTEREST. (1) A limited liability company interest is assignable in  
18 whole or in part except as provided in a limited liability company  
19 agreement. The assignee of a member's limited liability company  
20 interest shall have no right to participate in the management of the  
21 business and affairs of a limited liability company except:

22           (a) Upon the approval of all of the members of the limited  
23 liability company other than the member assigning his or her limited  
24 liability company interest; or

25           (b) As provided in a limited liability company agreement.

26           (2) Unless otherwise provided in a limited liability company  
27 agreement:

28           (a) An assignment entitles the assignee to share in such profits  
29 and losses, to receive such distributions, and to receive such  
30 allocation of income, gain, loss, deduction, or credit or similar item  
31 to which the assignor was entitled, to the extent assigned; and

32           (b) A member ceases to be a member and to have the power to  
33 exercise any rights or powers of a member upon assignment of all of his  
34 or her limited liability company interest.

1 (3) For the purposes of this chapter, unless otherwise provided in  
2 a limited liability company agreement:

3 (a) The pledge of, or granting of a security interest, lien, or  
4 other encumbrance in or against, any or all of the limited liability  
5 company interest of a member shall not be deemed to be an assignment of  
6 the member's limited liability company interest, but a foreclosure or  
7 execution sale or exercise of similar rights with respect to all of a  
8 member's limited liability company interest shall be deemed to be an  
9 assignment of the member's limited liability company interest to the  
10 transferee pursuant to such foreclosure or execution sale or exercise  
11 of similar rights;

12 (b) The death of a member who is an individual shall be deemed to  
13 be an assignment of that member's entire limited liability company  
14 interest to his or her personal representative;

15 (c) Where a limited liability company interest is held in a trust  
16 or estate, or is held by a trustee, personal representative, or other  
17 fiduciary, the transfer of the limited liability company interest,  
18 whether to a beneficiary of the trust or estate or otherwise, shall be  
19 deemed to be an assignment of such limited liability company interest,  
20 but the mere substitution or replacement of the trustee, personal  
21 representative, or other fiduciary shall not constitute an assignment  
22 of any portion of such limited liability company interest.

23 (4) Unless otherwise provided in a limited liability company  
24 agreement and except to the extent assumed by agreement, until an  
25 assignee of a limited liability company interest becomes a member, the  
26 assignee shall have no liability as a member solely as a result of the  
27 assignment.

28 NEW SECTION. **Sec. 703.** RIGHTS OF JUDGMENT CREDITOR. On  
29 application to a court of competent jurisdiction by any judgment  
30 creditor of a member, the court may charge the limited liability  
31 company interest of the member with payment of the unsatisfied amount  
32 of the judgment with interest. To the extent so charged, the judgment  
33 creditor has only the rights of an assignee of the limited liability  
34 company interest. This chapter does not deprive any member of the  
35 benefit of any exemption laws applicable to the member's limited  
36 liability company interest.



1 (5) The entry of a decree of judicial dissolution under section 802  
2 of this act;

3 (6) At any time there are fewer than two members unless, within  
4 ninety days following the event of dissociation upon which the number  
5 of members is reduced below two, one or more additional members are  
6 admitted so that there are at least two members; or

7 (7) The expiration of two years after the effective date of  
8 dissolution under section 804 of this act without the reinstatement of  
9 the limited liability company.

10 NEW SECTION. **Sec. 802.** JUDICIAL DISSOLUTION. On application by  
11 or for a member or manager the superior courts may decree dissolution  
12 of a limited liability company whenever: (1) It is not reasonably  
13 practicable to carry on the business in conformity with a limited  
14 liability company agreement; or (2) other circumstances render  
15 dissolution equitable.

16 NEW SECTION. **Sec. 803.** ADMINISTRATIVE DISSOLUTION--COMMENCEMENT  
17 OF PROCEEDING. The secretary of state may commence a proceeding under  
18 section 804 of this act to administratively dissolve a limited  
19 liability company if:

20 (1) The limited liability company is without a registered agent or  
21 registered office in this state for sixty days or more; or

22 (2) The limited liability company does not notify the secretary of  
23 state within sixty days that its registered agent or registered office  
24 has been changed, that its registered agent has resigned, or that its  
25 registered office has been discontinued.

26 NEW SECTION. **Sec. 804.** ADMINISTRATIVE DISSOLUTION--NOTICE--  
27 OPPORTUNITY TO CORRECT DEFICIENCIES. (1) If the secretary of state  
28 determines that one or more grounds exist under section 803 of this act  
29 for dissolving a limited liability company, the secretary of state  
30 shall give the limited liability company written notice of the  
31 determination by first class mail, postage prepaid, reciting the  
32 grounds therefor. Notice shall be sent to the address of the principal  
33 place of business of the limited liability company as it appears in the  
34 records of the secretary of state.

35 (2) If the limited liability company does not correct each ground  
36 for dissolution or demonstrate to the reasonable satisfaction of the

1 secretary of state that each ground determined by the secretary of  
2 state does not exist within sixty days after notice is sent, the  
3 limited liability company is thereupon dissolved. The secretary of  
4 state shall give the limited liability company written notice of the  
5 dissolution that recites the ground or grounds therefor and its  
6 effective date.

7 (3) A limited liability company administratively dissolved  
8 continues its existence but may not carry on any business except as  
9 necessary to wind up and liquidate its business and affairs.

10 (4) The administrative dissolution of a limited liability company  
11 does not terminate the authority of its registered agent.

12 NEW SECTION.           **Sec. 805.**           ADMINISTRATIVE DISSOLUTION--

13 REINSTATEMENT--APPLICATION--WHEN EFFECTIVE. (1) A limited liability  
14 company administratively dissolved under section 804 of this act may  
15 apply to the secretary of state for reinstatement within two years  
16 after the effective date of dissolution. The application must:

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

19 (b) State that the ground or grounds for dissolution either did not  
20 exist or have been eliminated; and

21 (c) State that the limited liability company's name satisfies the  
22 requirements of section 102 of this act.

23 (2) If the secretary of state determines that the application  
24 contains the information required by subsection (1) of this section and  
25 that the name is available, the secretary of state shall reinstate the  
26 limited liability company and give the limited liability company  
27 written notice, as provided in section 804(1) of this act, of the  
28 reinstatement that recites the effective date of reinstatement. If the  
29 name is not available, the limited liability company must file with its  
30 application for reinstatement an amendment to its certificate of  
31 formation reflecting a change of name.

32 (3) When the reinstatement is effective, it relates back to and  
33 takes effect as of the effective date of the administrative dissolution  
34 and the limited liability company may resume carrying on its business  
35 as if the administrative dissolution had never occurred.

36 (4) If an application for reinstatement is not made within the two-  
37 year period set forth in subsection (1) of this section, or if the  
38 application made within this period is not granted, the secretary of

1 state shall cancel the limited liability company's certificate of  
2 formation.

3 NEW SECTION. **Sec. 806.** WINDING UP. (1) Unless otherwise provided  
4 in a limited liability company agreement, a manager who has not  
5 wrongfully dissolved a limited liability company or, if none, the  
6 members or a person approved by the members or, if there is more than  
7 one class or group of members, then by each class or group of members,  
8 in either case, by members contributing, or required to contribute,  
9 more than fifty percent of the agreed value (as stated in the records  
10 of the limited liability company required to be kept pursuant to  
11 section 305 of this act) of the contributions made, or required to be  
12 made, by all members, or by the members in each class or group, as  
13 appropriate, may wind up the limited liability company's affairs. The  
14 superior courts, upon cause shown, may wind up the limited liability  
15 company's affairs upon application of any member or manager, his or her  
16 legal representative or assignee, and in connection therewith, may  
17 appoint a receiver.

18 (2) Upon dissolution of a limited liability company and until the  
19 filing of a certificate of cancellation as provided in section 203 of  
20 this act, the persons winding up the limited liability company's  
21 affairs may, in the name of, and for and on behalf of, the limited  
22 liability company, prosecute and defend suits, whether civil, criminal,  
23 or administrative, gradually settle and close the limited liability  
24 company's business, dispose of and convey the limited liability  
25 company's property, discharge or make reasonable provision for the  
26 limited liability company's liabilities, and distribute to the members  
27 any remaining assets of the limited liability company.

28 NEW SECTION. **Sec. 807.** DISTRIBUTION OF ASSETS. (1) Upon the  
29 winding up of a limited liability company, the assets shall be  
30 distributed as follows:

31 (a) To creditors, including members and managers who are creditors,  
32 to the extent otherwise permitted by law, in satisfaction of  
33 liabilities of the limited liability company (whether by payment or the  
34 making of reasonable provision for payment thereof) other than  
35 liabilities for which reasonable provision for payment has been made  
36 and liabilities for distributions to members under section 601 or 604  
37 of this act;

1 (b) Unless otherwise provided in a limited liability company  
2 agreement, to members and former members in satisfaction of liabilities  
3 for distributions under section 601 or 604 of this act; and

4 (c) Unless otherwise provided in a limited liability company  
5 agreement, to members first for the return of their contributions and  
6 second respecting their limited liability company interests, in the  
7 proportions in which the members share in distributions.

8 (2) A limited liability company which has dissolved shall pay or  
9 make reasonable provision to pay all claims and obligations, including  
10 all contingent, conditional, or unmatured claims and obligations, known  
11 to the limited liability company and all claims and obligations which  
12 are known to the limited liability company but for which the identity  
13 of the claimant is unknown. If there are sufficient assets, such  
14 claims and obligations shall be paid in full and any such provision for  
15 payment made shall be made in full. If there are insufficient assets,  
16 such claims and obligations shall be paid or provided for according to  
17 their priority and, among claims and obligations of equal priority,  
18 ratably to the extent of assets available therefor. Unless otherwise  
19 provided in a limited liability company agreement, any remaining assets  
20 shall be distributed as provided in this chapter. Any person winding  
21 up a limited liability company's affairs who has complied with this  
22 section is not personally liable to the claimants of the dissolved  
23 limited liability company by reason of such person's actions in winding  
24 up the limited liability company.

25 **ARTICLE IX. FOREIGN LIMITED LIABILITY COMPANIES**

26 NEW SECTION. **Sec. 901.** LAW GOVERNING. (1) Subject to the  
27 Constitution of the state of Washington:

28 (a) The laws of the state, territory, possession, or other  
29 jurisdiction or country under which a foreign limited liability company  
30 is organized govern its organization and internal affairs and the  
31 liability of its members and managers; and

32 (b) A foreign limited liability company may not be denied  
33 registration by reason of any difference between those laws and the  
34 laws of this state.

35 (2) A foreign limited liability company is subject to section 106  
36 of this act.

1 (3) A foreign limited liability company and its members and  
2 managers doing business in this state thereby submit to personal  
3 jurisdiction of the courts of this state and are subject to section 303  
4 of this act.

5 NEW SECTION. **Sec. 902.** REGISTRATION REQUIRED--APPLICATION.

6 Before doing business in this state, a foreign limited liability  
7 company shall register with the secretary of state. In order to  
8 register, a foreign limited liability company shall submit to the  
9 secretary of state, an application for registration as a foreign  
10 limited liability company executed by any member or manager of the  
11 foreign limited liability company, setting forth:

12 (1) The name of the foreign limited liability company and, if  
13 different, the name under which it proposes to register and do business  
14 in this state;

15 (2) The state, territory, possession, or other jurisdiction or  
16 country where formed, the date of its formation and a duly  
17 authenticated statement from the secretary of state or other official  
18 having custody of limited liability company records in the jurisdiction  
19 under whose law it was formed, that as of the date of filing the  
20 foreign limited liability company validly exists as a limited liability  
21 company under the laws of the jurisdiction of its formation;

22 (3) The nature of the business or purposes to be conducted or  
23 promoted in this state;

24 (4) The address of the registered office and the name and address  
25 of the registered agent for service of process required to be  
26 maintained by section 904(2) of this act;

27 (5) The address of the principal place of business of the foreign  
28 limited liability company;

29 (6) A statement that the secretary of state is appointed the agent  
30 of the foreign limited liability company for service of process under  
31 the circumstances set forth in section 910(2) of this act; and

32 (7) The date on which the foreign limited liability company first  
33 did, or intends to do, business in this state.

34 NEW SECTION. **Sec. 903.** ISSUANCE OF REGISTRATION. (1) If the

35 secretary of state finds that an application for registration conforms  
36 to law and all requisite fees have been paid, the secretary shall:

1 (a) Certify that the application has been filed in his or her  
2 office by endorsing upon the original application the word "Filed," and  
3 the date of the filing. This endorsement is conclusive of the date of  
4 its filing in the absence of actual fraud;

5 (b) File the endorsed application.

6 (2) The duplicate of the application, similarly endorsed, shall be  
7 returned to the person who filed the application or that person's  
8 representative.

9 NEW SECTION. **Sec. 904.** NAME--REGISTERED OFFICE--REGISTERED AGENT.

10 (1) A foreign limited liability company may register with the secretary  
11 of state under any name (whether or not it is the name under which it  
12 is registered in the jurisdiction of its formation) that includes the  
13 words "Limited Liability Company," the words "Limited Liability" and  
14 the abbreviation "Co.," or the abbreviation "L.L.C." and that could be  
15 registered by a domestic limited liability company. A foreign limited  
16 liability company may apply to the secretary of state for authorization  
17 to use a name which is not distinguishable upon the records of the  
18 office of the secretary of state from the names described in RCW  
19 23B.04.010(1)(d), and the names of any domestic or foreign limited  
20 liability company reserved, registered, or formed under the laws of  
21 this state. The secretary of state shall authorize use of the name  
22 applied for if the other corporation, limited liability company, or  
23 limited partnership consents in writing to the use and files with the  
24 secretary of state documents necessary to change its name, or the name  
25 reserved or registered to a name that is distinguishable upon the  
26 records of the secretary of state from the name of the applying foreign  
27 limited liability company.

28 (2) Each foreign limited liability company shall continuously  
29 maintain in this state:

30 (a) A registered office, which may but need not be a place of its  
31 business in this state. The registered office shall be at a specific  
32 geographic location in this state, and be identified by number, if any,  
33 and street, or building address or rural route, or, if a commonly known  
34 street or rural route address does not exist, by legal description. A  
35 registered office may not be identified by post office box number or  
36 other nongeographic address. For purposes of communicating by mail,  
37 the secretary of state may permit the use of a post office address in  
38 the same city as the registered office in conjunction with the

1 registered office address if the foreign limited liability company also  
2 maintains on file the specific geographic address of the registered  
3 office where personal service of process may be made;

4 (b) A registered agent for service of process on the foreign  
5 limited liability company, which agent may be either an individual  
6 resident of this state whose business office is identical with the  
7 foreign limited liability company's registered office, or a domestic  
8 corporation, a limited partnership or limited liability company, or a  
9 foreign corporation authorized to do business in this state having a  
10 business office identical with such registered office; and

11 (c) A registered agent who shall not be appointed without having  
12 given prior written consent to the appointment. The written consent  
13 shall be filed with the secretary of state in such form as the  
14 secretary may prescribe. The written consent shall be filled with or  
15 as a part of the document first appointing a registered agent. In the  
16 event any individual, limited liability company, limited partnership,  
17 or corporation has been appointed agent without consent, that person or  
18 corporation may file a notarized statement attesting to that fact, and  
19 the name shall forthwith be removed from the records of the secretary  
20 of state.

21 (3) A registered agent may change the address of the registered  
22 office of the foreign limited liability company or companies for which  
23 the registered agent is registered agent to another address in this  
24 state by filing with the secretary of state a certificate, executed by  
25 such registered agent, setting forth the names of all the foreign  
26 limited liability companies represented by such registered agent, and  
27 the address at which such registered agent has maintained the  
28 registered office for each of such foreign limited liability companies,  
29 and further certifying to the new address to which each such registered  
30 office will be changed on a given day, and at which new address such  
31 registered agent will thereafter maintain the registered office for  
32 each of the foreign limited liability companies recited in the  
33 certificate. Upon the filing of such certificate, the secretary of  
34 state shall furnish to the registered agent a certified copy of the  
35 same, and thereafter, or until further change of address, as authorized  
36 by law, the registered office in this state of each of the foreign  
37 limited liability companies recited in the certificate shall be located  
38 at the new address of the registered agent thereof as given in the  
39 certificate. In the event of a change of name of any person acting as

1 a registered agent of a foreign limited liability company, such  
2 registered agent shall file with the secretary of state a certificate,  
3 executed by such registered agent, setting forth the new name of such  
4 registered agent, the name of such registered agent before it was  
5 changed, the names of all the foreign limited liability companies  
6 represented by such registered agent, and the address at which such  
7 registered agent has maintained the registered office for each of such  
8 foreign limited liability companies. Upon the filing of such  
9 certificate, the secretary of state shall furnish to the registered  
10 agent a certified copy of the same. Filing a certificate under this  
11 section shall be deemed to be an amendment of the application for  
12 registration of each foreign limited liability company affected thereby  
13 and each foreign limited liability company shall not be required to  
14 take any further action with respect thereto, to amend its application  
15 under section 905 of this act. Any registered agent filing a  
16 certificate under this section shall promptly, upon such filing,  
17 deliver a copy of any such certificate to each foreign limited  
18 liability company affected thereby.

19 (4) The registered agent of one or more foreign limited liability  
20 companies may resign and appoint a successor registered agent by filing  
21 a certificate with the secretary of state, stating that it resigns and  
22 the name and address of the successor registered agent. There shall be  
23 attached to such certificate a statement executed by each affected  
24 foreign limited liability company ratifying and approving such change  
25 of registered agent. Upon such filing, the successor registered agent  
26 shall become the registered agent of such foreign limited liability  
27 company as has ratified and approved such substitution and the  
28 successor registered agent's address, as stated in such certificate,  
29 shall become the address of each such foreign limited liability  
30 company's registered office in this state. The secretary of state  
31 shall furnish to the successor registered agent a certified copy of the  
32 certificate of resignation. Filing of such certificate of resignation  
33 shall be deemed to be an amendment of the application for registration  
34 of each foreign limited liability company affected thereby and each  
35 such foreign limited liability company shall not be required to take  
36 any further action with respect thereto, to amend its application under  
37 section 905 of this act.

38 (5) The registered agent of a foreign limited liability company may  
39 resign without appointing a successor registered agent by filing a

1 certificate with the secretary of state stating that it resigns as  
2 registered agent for the foreign limited liability company identified  
3 in the certificate, but such resignation shall not become effective  
4 until one hundred twenty days after the certificate is filed. There  
5 shall be attached to such certificate an affidavit of such registered  
6 agent, if an individual, or of the president, a vice-president, or the  
7 secretary thereof if a corporation, that at least thirty days prior to  
8 and on or about the date of the filing of said certificate, notices  
9 were sent by certified or registered mail to the foreign limited  
10 liability companies for which such registered agent is resigning as  
11 registered agent, at the principal office thereof within or outside  
12 this state, if known to such registered agent or, if not, to the last  
13 known address of the attorney or other individual at whose request such  
14 registered agent was appointed for such foreign limited liability  
15 company, of the resignation of such registered agent. After receipt of  
16 the notice of the resignation of its registered agent, the foreign  
17 limited liability company for which such registered agent was acting  
18 shall obtain and designate a new registered agent, to take the place of  
19 the registered agent so resigning. If such foreign limited liability  
20 company fails to obtain and designate a new registered agent as  
21 aforesaid prior to the expiration of the period of one hundred twenty  
22 days after the filing by the registered agent of the certificate of  
23 resignation, such foreign limited liability company shall not be  
24 permitted to do business in this state and its registration shall be  
25 deemed to be canceled. After the resignation of the registered agent  
26 shall have become effective as provided in this section and if no new  
27 registered agent shall have been obtained and designated in the time  
28 and manner aforesaid, service of legal process against the foreign  
29 limited liability company for which the resigned registered agent had  
30 been acting shall thereafter be upon the secretary of state in  
31 accordance with section 911 of this act.

32 NEW SECTION. **Sec. 905.** AMENDMENTS TO APPLICATION. If any  
33 statement in the application for registration of a foreign limited  
34 liability company was false when made or any arrangements or other  
35 facts described have changed, making the application false in any  
36 respect, the foreign limited liability company shall promptly file in  
37 the office of the secretary of state a certificate, executed by any  
38 member or manager, correcting such statement.

1        NEW SECTION.    **Sec. 906.**    CANCELLATION OF REGISTRATION.    (1) A

2 foreign limited liability company may cancel its registration by filing  
3 with the secretary of state a certificate of cancellation, executed by  
4 any member or manager. A cancellation does not terminate the authority  
5 of the secretary of state to accept service of process on the foreign  
6 limited liability company with respect to causes of action arising out  
7 of the doing of business in this state.

8        (2) The certificate of cancellation shall set forth:

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

10       (b) The date of filing of its certificate of registration;

11       (c) The reason for filing the certificate of cancellation;

12       (d) The future effective date (not later than the ninetieth day  
13 after the date it is filed) of cancellation if it is not to be  
14 effective upon filing of the certificate;

15       (e) The address to which service of process may be forwarded; and

16       (f) Any other information the person filing the certificate of  
17 cancellation desires.

18       NEW SECTION.    **Sec. 907.**    DOING BUSINESS WITHOUT REGISTRATION.    (1)

19 A foreign limited liability company doing business in this state may  
20 not maintain any action, suit, or proceeding in this state until it has  
21 registered in this state, and has paid to this state all fees and  
22 penalties for the years or parts thereof, during which it did business  
23 in this state without having registered.

24       (2) The failure of a foreign limited liability company to register  
25 in this state does not impair:

26       (a) The validity of any contract or act of the foreign limited  
27 liability company;

28       (b) The right of any other party to the contract to maintain any  
29 action, suit, or proceeding on the contract; or

30       (c) Prevent the foreign limited liability company from defending  
31 any action, suit, or proceeding in any court of this state.

32       (3) A member or a manager of a foreign limited liability company is  
33 not liable for the obligations of the foreign limited liability company  
34 solely by reason of the limited liability company's having done  
35 business in this state without registration.

36       NEW SECTION.    **Sec. 908.**    FOREIGN LIMITED LIABILITY COMPANIES DOING  
37 BUSINESS WITHOUT HAVING QUALIFIED--INJUNCTIONS.    The superior courts

1 shall have jurisdiction to enjoin any foreign limited liability  
2 company, or any agent thereof, from doing any business in this state if  
3 such foreign limited liability company has failed to register under  
4 this article or if such foreign limited liability company has secured  
5 a certificate of registration from the secretary of state under section  
6 903 of this act on the basis of false or misleading representations.  
7 The secretary of state shall, upon the secretary's own motion or upon  
8 the relation of proper parties, proceed for this purpose by complaint  
9 in any county in which such foreign limited liability company is doing  
10 or has done business.

11 NEW SECTION. **Sec. 909.** TRANSACTIONS NOT CONSTITUTING TRANSACTING  
12 BUSINESS. (1) The following activities, among others, do not  
13 constitute transacting business within the meaning of this article:

14 (a) Maintaining or defending any action or suit or any  
15 administrative or arbitration proceeding, or effecting the settlement  
16 thereof or the settlement of claims or disputes;

17 (b) Holding meetings of the members, or managers if any, or  
18 carrying on other activities concerning internal limited liability  
19 company affairs;

20 (c) Maintaining bank accounts, share accounts in savings and loan  
21 associations, custodian or agency arrangements with a bank or trust  
22 company, or stock or bond brokerage accounts;

23 (d) Maintaining offices or agencies for the transfer, exchange, and  
24 registration of the foreign limited liability company's own securities  
25 or interests or maintaining trustees or depositaries with respect to  
26 those securities or interests;

27 (e) Selling through independent contractors;

28 (f) Soliciting or procuring orders, whether by mail or through  
29 employees or agents or otherwise, where the orders require acceptance  
30 outside this state before becoming binding contracts and where the  
31 contracts do not involve any local performance other than delivery and  
32 installation;

33 (g) Making loans or creating or acquiring evidences of debt,  
34 mortgages, or liens on real or personal property, or recording same;

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

37 (i) Owning, without more, real or personal property;

1 (j) Conducting an isolated transaction that is completed within  
2 thirty days and that is not one in the course of repeated transactions  
3 of a like nature;

4 (k) Transacting business in interstate commerce;

5 (l) Owning a controlling interest in a corporation or a foreign  
6 corporation that transacts business within this state;

7 (m) Participating as a limited partner of a domestic or foreign  
8 limited partnership that transacts business within this state; or

9 (n) Participating as a member or a manager of a domestic or foreign  
10 limited liability company that transacts business within this state.

11 (2) The list of activities in subsection (1) of this section is not  
12 exhaustive.

13 NEW SECTION. **Sec. 910.** SERVICE OF PROCESS ON REGISTERED FOREIGN  
14 LIMITED LIABILITY COMPANIES. (1) A foreign limited liability company's  
15 registered agent is its agent for service of process, notice, or demand  
16 required or permitted by law to be served on the foreign limited  
17 liability company.

18 (2) The secretary of state shall be an agent of a foreign limited  
19 liability company upon whom any such process, notice, or demand may be  
20 served if:

21 (a) The foreign limited liability company fails to appoint or  
22 maintain a registered agent in this state; or

23 (b) The registered agent cannot with reasonable diligence be found  
24 at the registered office.

25 (3) Service on the secretary of state of any such process, notice,  
26 or demand shall be made by delivering to and leaving with the secretary  
27 of state, or with any duly authorized clerk of the secretary of state's  
28 office, the process, notice, or demand. In the event any such process,  
29 notice, or demand is served on the secretary of state, the secretary of  
30 state shall immediately cause a copy thereof to be forwarded by  
31 certified mail, addressed to the foreign limited liability company at  
32 the address of its principal place of business as it appears on the  
33 records of the secretary of state. Any service so had on the secretary  
34 of state shall be returnable in not less than thirty days.

35 (4) The secretary of state shall keep a record of all processes,  
36 notices, and demands served upon the secretary of state under this  
37 section, and shall record therein the time of such service and the  
38 secretary of state's action with reference thereto.

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

5 NEW SECTION. **Sec. 911.** SERVICE OF PROCESS ON UNREGISTERED FOREIGN  
6 LIMITED LIABILITY COMPANIES. (1) Any foreign limited liability company  
7 which shall do business in this state without having registered under  
8 section 902 of this act shall be deemed to have thereby appointed and  
9 constituted the secretary of state its agent for the acceptance of  
10 legal process in any civil action, suit, or proceeding against it in  
11 any state or federal court in this state arising or growing out of any  
12 business done by it within this state. The doing of business in this  
13 state by such foreign limited liability company shall be a  
14 signification of the agreement of such foreign limited liability  
15 company that any such process when so served shall be of the same legal  
16 force and validity as if served upon a registered agent personally  
17 within this state.

18 (2) In the event of service upon the secretary of state in  
19 accordance with subsection (1) of this section, the secretary of state  
20 shall forthwith notify the foreign limited liability company thereof by  
21 letter, certified mail, return receipt requested, directed to the  
22 foreign limited liability company at the address furnished to the  
23 secretary of state by the plaintiff in such action, suit, or  
24 proceeding. Such letter shall enclose a copy of the process and any  
25 other papers served upon the secretary of state. It shall be the duty  
26 of the plaintiff in the event of such service to serve process and any  
27 other papers in duplicate, to notify the secretary of state that  
28 service is being made pursuant to this subsection.

29 **ARTICLE X. DERIVATIVE ACTIONS**

30 NEW SECTION. **Sec. 1001.** RIGHT TO BRING ACTION. A member may  
31 bring an action in the superior courts in the right of a limited  
32 liability company to recover a judgment in its favor if managers or  
33 members with authority to do so have refused to bring the action or if  
34 an effort to cause those managers or members to bring the action is not  
35 likely to succeed.



1 merger into the interests, shares, obligations, or other securities of  
2 the surviving or any other limited liability company, limited  
3 partnership, or corporation or into cash or other property in whole or  
4 part.

5 (3) The plan of merger may set forth:

6 (a) Amendments to the certificate of formation of the surviving  
7 limited liability company;

8 (b) Amendments to the certificate of limited partnership of the  
9 surviving limited partnership;

10 (c) Amendments to the articles of incorporation of the surviving  
11 corporation; and

12 (d) Other provisions relating to the merger.

13 (4) If the plan of merger does not specify a delayed effective  
14 date, it shall become effective upon the filing of articles of merger.  
15 If the plan of merger specifies a delayed effective time and date, the  
16 plan of merger becomes effective at the time and date specified. If  
17 the plan of merger specifies a delayed effective date but no time is  
18 specified, the plan of merger is effective at the close of business on  
19 that date. A delayed effective date for a plan of merger may not be  
20 later than the ninetieth day after the date it is filed.

21 NEW SECTION. **Sec. 1102.** MERGER--PLAN--APPROVAL. (1) Unless  
22 otherwise provided in the limited liability company agreement, approval  
23 of a plan of merger by a domestic limited liability company party to  
24 the merger shall occur when the plan is approved by the members, or if  
25 there is more than one class or group of members, then by each class or  
26 group of members, in either case, by members contributing more than  
27 fifty percent of the agreed value (as stated in the records of the  
28 limited liability company required to be kept pursuant to section 305  
29 of this act) of the contributions made, or obligated to be made, by all  
30 members or by the members in each class or group, as appropriate.

31 (2) If a domestic limited partnership is a party to the merger, the  
32 plan of merger shall be adopted and approved as provided in RCW  
33 25.10.810.

34 (3) If a domestic corporation is a party to the merger, the plan of  
35 merger shall be adopted and approved as provided in chapter 23B.11 RCW.

36 NEW SECTION. **Sec. 1103.** ARTICLES OF MERGER--FILING. After a plan  
37 of merger is approved or adopted, the surviving limited liability

1 company, limited partnership, or corporation shall deliver to the  
2 secretary of state for filing articles of merger setting forth:

3 (1) The plan of merger;

4 (2) If the approval of any members, partners, or shareholders of  
5 one or more limited liability companies, limited partnerships, or  
6 corporations party to the merger was not required, a statement to that  
7 effect; or

8 (3) If the approval of any members, partners, or shareholders of  
9 one or more of the limited liability companies, limited partnerships,  
10 or corporations party to the merger was required, a statement that the  
11 merger was duly approved by such members, partners, and shareholders  
12 pursuant to section 1102 of this act, RCW 25.10.810, or chapter 23B.11  
13 RCW.

14 NEW SECTION. **Sec. 1104.** EFFECT OF MERGER. (1) When a merger  
15 takes effect:

16 (a) Every other limited liability company, limited partnership, or  
17 corporation that is party to the merger merges into the surviving  
18 limited liability company, limited partnership, or corporation and the  
19 separate existence of every limited liability company, limited  
20 partnership, or corporation except the surviving limited liability  
21 company, limited partnership, or corporation ceases;

22 (b) The title to all real estate and other property owned by each  
23 limited liability company, limited partnership, and corporation party  
24 to the merger is vested in the surviving limited liability company,  
25 limited partnership, or corporation without reversion or impairment;

26 (c) The surviving limited liability company, limited partnership,  
27 or corporation has all liabilities of each limited liability company,  
28 limited partnership, and corporation that is party to the merger;

29 (d) A proceeding pending against any limited liability company,  
30 limited partnership, or corporation that is party to the merger may be  
31 continued as if the merger did not occur or the surviving limited  
32 liability company, limited partnership, or corporation may be  
33 substituted in the proceeding for the limited liability company,  
34 limited partnership, or corporation whose existence ceased;

35 (e) The certificate of formation of the surviving limited liability  
36 company is amended to the extent provided in the plan of merger;

37 (f) The partnership agreement of the surviving limited partnership  
38 is amended to the extent provided in the plan of merger;

1 (g) The articles of incorporation of the surviving corporation are  
2 amended to the extent provided in the plan of merger; and

3 (h) The former members of every limited liability company party to  
4 the merger, holders of the partnership interests of every domestic  
5 limited partnership that is party to the merger, and the former holders  
6 of the shares of every domestic corporation that is party to the merger  
7 are entitled only to the rights provided in the plan of merger, or to  
8 their rights under this article, to their rights under RCW 25.10.900  
9 through 25.10.955, or to their rights under chapter 23B.13 RCW.

10 (2) Unless otherwise agreed, a merger of a domestic limited  
11 liability company, including a domestic limited liability company which  
12 is not the surviving entity in the merger, shall not require the  
13 domestic limited liability company to wind up its affairs under section  
14 806 of this act or pay its liabilities and distribute its assets under  
15 section 807 of this act.

16 (3) Unless otherwise agreed, a merger of a domestic limited  
17 partnership, including a domestic limited partnership which is not the  
18 surviving entity in the merger, shall not require the domestic limited  
19 partnership to wind up its affairs under RCW 25.10.460 or pay its  
20 liabilities and distribute its assets under RCW 25.10.470.

21 NEW SECTION. Sec. 1105. MERGER--FOREIGN AND DOMESTIC. (1) One or  
22 more foreign limited liability companies, one or more foreign limited  
23 partnerships, and one or more foreign corporations may merge with one  
24 or more domestic limited liability companies, domestic limited  
25 partnerships, or domestic corporations if:

26 (a) The merger is permitted by the law of the jurisdiction under  
27 which each foreign limited liability company was formed, each foreign  
28 limited partnership was organized, and each foreign corporation was  
29 incorporated, and each foreign limited liability company, foreign  
30 limited partnership, and foreign corporation complies with that law in  
31 effecting the merger;

32 (b) The surviving entity complies with section 1103 of this act;

33 (c) Each domestic limited liability company complies with section  
34 1102 of this act;

35 (d) Each domestic limited partnership complies with RCW 25.10.810;  
36 and

37 (e) Each domestic corporation complies with RCW 23B.11.080.

1 (2) Upon the merger taking effect, a surviving foreign limited  
2 liability company, limited partnership, or corporation is deemed to  
3 appoint the secretary of state as its agent for service of process in  
4 a proceeding to enforce any obligation or the rights of dissenting  
5 partners or shareholders of each domestic limited liability company,  
6 domestic limited partnership, or domestic corporation party to the  
7 merger.

8 **ARTICLE XII. DISSENTERS' RIGHTS**

9 NEW SECTION. **Sec. 1201.** DEFINITIONS. As used in this article,  
10 unless the context otherwise requires:

11 (1) "Limited liability company" means the domestic limited  
12 liability company in which the dissenter holds or held a membership  
13 interest, or the surviving limited liability company, limited  
14 partnership, or corporation by merger, whether foreign or domestic, of  
15 that limited liability company.

16 (2) "Dissenter" means a member who is entitled to dissent from a  
17 plan of merger and who exercises that right when and in the manner  
18 required by this article.

19 (3) "Fair value," with respect to a dissenter's limited liability  
20 company interest, means the value of the member's limited liability  
21 company interest immediately before the effectuation of the merger to  
22 which the dissenter objects, excluding any appreciation or depreciation  
23 in anticipation of the merger unless exclusion would be inequitable.

24 (4) "Interest" means interest from the effective date of the merger  
25 until the date of payment, at the average rate currently paid by the  
26 limited liability company on its principal bank loans or, if none, at  
27 a rate that is fair and equitable under all the circumstances.

28 NEW SECTION. **Sec. 1202.** MEMBER--DISSENT--PAYMENT OF FAIR VALUE.

29 (1) Except as provided in section 1204 or 1206(2) of this act, a member  
30 of a domestic limited liability company is entitled to dissent from,  
31 and obtain payment of, the fair value of the member's interest in a  
32 limited liability company in the event of consummation of a plan of  
33 merger to which the limited liability company is a party as permitted  
34 by section 1101 or 1105 of this act.

1 (2) A member entitled to dissent and obtain payment for the  
2 member's interest in a limited liability company under this article may  
3 not challenge the merger creating the member's entitlement unless the  
4 merger fails to comply with the procedural requirements imposed by this  
5 title, Title 23B RCW, RCW 25.10.800 through 25.10.840, or the limited  
6 liability company agreement, or is fraudulent with respect to the  
7 member or the limited liability company.

8 (3) The right of a dissenting member in a limited liability company  
9 to obtain payment of the fair value of the member's interest in the  
10 limited liability company shall terminate upon the occurrence of any  
11 one of the following events:

12 (a) The proposed merger is abandoned or rescinded;

13 (b) A court having jurisdiction permanently enjoins or sets aside  
14 the merger; or

15 (c) The member's demand for payment is withdrawn with the written  
16 consent of the limited liability company.

17 NEW SECTION. Sec. 1203. DISSENTERS' RIGHTS--NOTICE--TIMING. (1)  
18 Not less than ten days prior to the approval of a plan of merger, the  
19 limited liability company must send a written notice to all members who  
20 are entitled to vote on or approve the plan of merger that they may be  
21 entitled to assert dissenters' rights under this article. Such notice  
22 shall be accompanied by a copy of this article.

23 (2) The limited liability company shall notify in writing all  
24 members not entitled to vote on or approve the plan of merger that the  
25 plan of merger was approved, and send them the dissenters' notice as  
26 required by section 1205 of this act.

27 NEW SECTION. Sec. 1204. MEMBER--DISSENT--VOTING RESTRICTION. A  
28 member of a limited liability company who is entitled to vote on or  
29 approve the plan of merger and who wishes to assert dissenters' rights  
30 must not vote in favor of or approve the plan of merger. A member who  
31 does not satisfy the requirements of this section is not entitled to  
32 payment for the member's interest in the limited liability company  
33 under this article.

34 NEW SECTION. Sec. 1205. MEMBERS--DISSENTERS' NOTICE--  
35 REQUIREMENTS. (1) If the plan of merger is approved, the limited

1 liability company shall deliver a written dissenters' notice to all  
2 members who satisfied the requirements of section 1204 of this act.

3 (2) The dissenters' notice required by section 1203(2) of this act  
4 or by subsection (1) of this section must be sent within ten days after  
5 the approval of the plan of merger, and must:

6 (a) State where the payment demand must be sent;

7 (b) Inform members as to the extent transfer of the member's  
8 interest in the limited liability company will be restricted as  
9 permitted by section 1207 of this act after the payment demand is  
10 received;

11 (c) Supply a form for demanding payment;

12 (d) Set a date by which the limited liability company must receive  
13 the payment demand, which date may not be fewer than thirty nor more  
14 than sixty days after the date the notice under this section is  
15 delivered; and

16 (e) Be accompanied by a copy of this article.

17 NEW SECTION. **Sec. 1206.** MEMBER--PAYMENT DEMAND--ENTITLEMENT. (1)

18 A member of a limited liability company who demands payment retains all  
19 other rights of a member of such company until the proposed merger  
20 becomes effective.

21 (2) A member of a limited liability company sent a dissenters'  
22 notice who does not demand payment by the date set in the dissenters'  
23 notice is not entitled to payment for the member's interest in the  
24 limited liability company under this article.

25 NEW SECTION. **Sec. 1207.** MEMBER'S INTERESTS--TRANSFER RESTRICTION.

26 The limited liability company agreement may restrict the transfer of  
27 members' interests in the limited liability company from the date the  
28 demand for their payment is received until the proposed merger becomes  
29 effective or the restriction is released under this article.

30 NEW SECTION. **Sec. 1208.** PAYMENT OF FAIR VALUE--REQUIREMENTS FOR

31 COMPLIANCE. (1) Within thirty days of the later of the date the  
32 proposed merger becomes effective, or the payment demand is received,  
33 the limited liability company shall pay each dissenter who complied  
34 with section 1206 of this act the amount the limited liability company  
35 estimates to be the fair value of the dissenting member's interest in  
36 the limited liability company, plus accrued interest.

- 1 (2) The payment must be accompanied by:
- 2 (a) Copies of the financial statements for the limited liability
- 3 company for its most recent fiscal year;
- 4 (b) An explanation of how the limited liability company estimated
- 5 the fair value of the member's interest in the limited liability
- 6 company;
- 7 (c) An explanation of how the accrued interest was calculated;
- 8 (d) A statement of the dissenter's right to demand payment; and
- 9 (e) A copy of this article.

10 NEW SECTION. Sec. 1209. MERGER--NOT EFFECTIVE WITHIN SIXTY DAYS--

11 TRANSFER RESTRICTIONS. (1) If the proposed merger does not become

12 effective within sixty days after the date set for demanding payment,

13 the limited liability company shall release any transfer restrictions

14 imposed as permitted by section 1207 of this act.

15 (2) If, after releasing transfer restrictions, the proposed merger

16 becomes effective, the limited liability company must send a new

17 dissenters' notice as provided in sections 1203(2) and 1205 of this act

18 and repeat the payment demand procedure.

19 NEW SECTION. Sec. 1210. DISSENTER'S ESTIMATE OF FAIR VALUE--

20 NOTICE. (1) A dissenting member may notify the limited liability

21 company in writing of the dissenter's own estimate of the fair value of

22 the dissenter's interest in the limited liability company, and amount

23 of interest due, and demand payment of the dissenter's estimate, less

24 any payment under section 1208 of this act, if:

25 (a) The dissenter believes that the amount paid is less than the

26 fair value of the dissenter's interest in the limited liability

27 company, or that the interest due is incorrectly calculated;

28 (b) The limited liability company fails to make payment within

29 sixty days after the date set for demanding payment; or

30 (c) The limited liability company, having failed to effectuate the

31 proposed merger, does not release the transfer restrictions imposed on

32 members' interests as permitted by section 1207 of this act within

33 sixty days after the date set for demanding payment.

34 (2) A dissenter waives the right to demand payment under this

35 section unless the dissenter notifies the limited liability company of

36 the dissenter's demand in writing under subsection (1) of this section

1 within thirty days after the limited liability company made payment for  
2 the dissenter's interest in the limited liability company.

3 NEW SECTION. **Sec. 1211.** UNSETTLED DEMAND FOR PAYMENT--  
4 PROCEEDING--PARTIES--APPRAISERS. (1) If a demand for payment under  
5 section 1206 of this act remains unsettled, the limited liability  
6 company shall commence a proceeding within sixty days after receiving  
7 the payment demand and petition the court to determine the fair value  
8 of the dissenting member's interest in the limited liability company,  
9 and accrued interest. If the limited liability company does not  
10 commence the proceeding within the sixty-day period, it shall pay each  
11 dissenter whose demand remains unsettled the amount demanded.

12 (2) The limited liability company shall commence the proceeding in  
13 the superior court. If the limited liability company is a domestic  
14 limited liability company, it shall commence the proceeding in the  
15 county where its registered office is maintained.

16 (3) The limited liability company shall make all dissenters  
17 (whether or not residents of this state) whose demands remain unsettled  
18 parties to the proceeding as in an action against their membership  
19 interests in the limited liability company and all parties must be  
20 served with a copy of the petition. Nonresidents may be served by  
21 registered or certified mail or by publication as provided by law.

22 (4) The limited liability company may join as a party to the  
23 proceeding any member who claims to be a dissenter but who has not, in  
24 the opinion of the limited liability company, complied with the  
25 provisions of this article. If the court determines that such member  
26 has not complied with the provisions of this article, the member shall  
27 be dismissed as a party.

28 (5) The jurisdiction of the court in which the proceeding is  
29 commenced is plenary and exclusive. The court may appoint one or more  
30 persons as appraisers to receive evidence and recommend decisions on  
31 the question of fair value. The appraisers have the powers described  
32 in the order appointing them or in any amendment to it. The dissenters  
33 are entitled to the same discovery rights as parties in other civil  
34 proceedings.

35 (6) Each dissenter made a party to the proceeding is entitled to  
36 judgment for the amount, if any, by which the court finds the fair  
37 value of the dissenter's membership interest in the limited liability

1 company, plus interest, exceeds the amount paid by the limited  
2 liability company.

3 NEW SECTION. **Sec. 1212.** UNSETTLED DEMAND FOR PAYMENT--COSTS--FEES  
4 AND EXPENSES OF COUNSEL. (1) The court in a proceeding commenced under  
5 section 1211 of this act shall determine all costs of the proceeding,  
6 including the reasonable compensation and expenses of appraisers  
7 appointed by the court. The court shall assess the costs against the  
8 limited liability company, except that the court may assess the costs  
9 against all or some of the dissenters, in amounts the court finds  
10 equitable, to the extent the court finds the dissenters acted  
11 arbitrarily, vexatiously, or not in good faith in demanding payment.

12 (2) The court may also assess the fees and expenses of counsel and  
13 experts for the respective parties, in amounts the court finds  
14 equitable:

15 (a) Against the limited liability company and in favor of any or  
16 all dissenters if the court finds the limited liability company did not  
17 substantially comply with the requirements of this article; or

18 (b) Against either the limited liability company or a dissenter, in  
19 favor of any other party, if the court finds that the party against  
20 whom the fees and expenses are assessed acted arbitrarily, vexatiously,  
21 or not in good faith with respect to the rights provided by this  
22 article.

23 (3) If the court finds that the services of counsel for any  
24 dissenter were of substantial benefit to other dissenters similarly  
25 situated, and that the fees for those services should not be assessed  
26 against the limited liability company, the court may award to these  
27 counsel reasonable fees to be paid out of the amounts awarded to the  
28 dissenters who were benefited.

29 **ARTICLE XIII. MISCELLANEOUS**

30 NEW SECTION. **Sec. 1301.** CONSTRUCTION AND APPLICATION OF CHAPTER  
31 AND LIMITED LIABILITY COMPANY AGREEMENT. (1) The rule that statutes in  
32 derogation of the common law are to be strictly construed shall have no  
33 application to this chapter.

1 (2) It is the policy of this chapter to give the maximum effect to  
2 the principle of freedom of contract and to the enforceability of  
3 limited liability company agreements.

4 (3) Unless the context otherwise requires, as used in this chapter,  
5 the singular shall include the plural and the plural may refer to only  
6 the singular. The captions contained herein are for purposes of  
7 convenience only and shall not control or affect the construction of  
8 this chapter and do not constitute part of the law.

9 NEW SECTION. **Sec. 1302.** ESTABLISHMENT OF FILING FEES AND  
10 MISCELLANEOUS CHARGES. (1) The secretary of state shall adopt rules  
11 establishing fees which shall be charged and collected for:

12 (a) Filing of a certificate of formation for a domestic limited  
13 liability company or an application for registration of a foreign  
14 limited liability company;

15 (b) Filing of a certificate of cancellation for a domestic or  
16 foreign limited liability company;

17 (c) Filing of a certificate of amendment or restatement for a  
18 domestic or foreign limited liability company;

19 (d) Filing an application to reserve, register, or transfer a  
20 limited liability company name;

21 (e) Filing any other certificate, statement, or report authorized  
22 or permitted to be filed;

23 (f) Copies, certified copies, certificates, service of process  
24 filings, and expedited filings or other special services.

25 (2) In the establishment of a fee schedule, the secretary of state  
26 shall, insofar as is possible and reasonable, be guided by the fee  
27 schedule provided for corporations governed by Title 23B RCW. Fees for  
28 copies, certified copies, certificates of record, and service of  
29 process filings shall be as provided for in RCW 23B.01.220.

30 (3) All fees collected by the secretary of state shall be deposited  
31 with the state treasurer pursuant to law.

32 NEW SECTION. **Sec. 1303.** AUTHORITY TO ADOPT RULES. The secretary  
33 of state shall adopt such rules as are necessary to implement the  
34 transfer of duties and records required by this chapter.

35 **Sec. 1304.** RCW 23B.04.010 and 1991 c 269 s 36 and 1991 c 72 s 32  
36 are each reenacted and amended to read as follows:

1 (1) A corporate name:  
2 (a) Must contain the word "corporation," "incorporated," "company,"  
3 or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";  
4 (b) Must not contain language stating or implying that the  
5 corporation is organized for a purpose other than those permitted by  
6 RCW 23B.03.010 and its articles of incorporation;  
7 (c) Must not contain any of the following words or phrases:  
8 "Bank," "banking," "banker," "trust," "cooperative," or any  
9 combination of the words "industrial" and "loan," or any combination of  
10 any two or more of the words "building," "savings," "loan," "home,"  
11 "association," and "society," or any other words or phrases prohibited  
12 by any statute of this state; and  
13 (d) Except as authorized by subsections (2) and (3) of this  
14 section, must be distinguishable upon the records of the secretary of  
15 state from:  
16 (i) The corporate name of a corporation incorporated or authorized  
17 to transact business in this state;  
18 (ii) A corporate name reserved or registered under RCW 23B.04.020  
19 or 23B.04.030;  
20 (iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a  
21 foreign corporation authorized to transact business in this state  
22 because its real name is unavailable;  
23 (iv) The corporate name of a not-for-profit corporation  
24 incorporated or authorized to conduct affairs in this state; ~~((and))~~  
25 (v) The name or reserved name of a foreign or domestic limited  
26 partnership formed or registered under chapter 25.08 or 25.10 RCW; and  
27 (vi) The name of any limited liability company organized or  
28 registered under chapter 25.-- RCW (sections 101 through 1303 and 1312  
29 through 1314) of this act.  
30 (2) A corporation may apply to the secretary of state for  
31 authorization to use a name that is not distinguishable upon the  
32 records from one or more of the names described in subsection (1) of  
33 this section. The secretary of state shall authorize use of the name  
34 applied for if:  
35 (a) The other corporation, company, holder, or limited partnership  
36 consents to the use in writing and files with the secretary of state  
37 documents necessary to change its name or the name reserved or  
38 registered to a name that is distinguishable upon the records of the  
39 secretary of state from the name of the applying corporation; or

1 (b) The applicant delivers to the secretary of state a certified  
2 copy of the final judgment of a court of competent jurisdiction  
3 establishing the applicant's right to use the name applied for in this  
4 state.

5 (3) A corporation may use the name, including the fictitious name,  
6 of another domestic or foreign corporation, or of another domestic or  
7 foreign limited liability company, or of a domestic or foreign limited  
8 partnership, that is used in this state if the other corporation is  
9 incorporated or authorized to transact business in this state, or if  
10 the limited liability company is organized or authorized to transact  
11 business in this state, or if the limited partnership is formed or  
12 authorized to transact business in this state, and the proposed user  
13 corporation:

14 (a) Has merged with the other corporation, limited liability  
15 company, or limited partnership; or

16 (b) Has been formed by reorganization of the other corporation.

17 (4) This title does not control the use of assumed business names  
18 or "trade names."

19 (5) A name shall not be considered distinguishable upon the records  
20 of the secretary of state by virtue of:

21 (a) A variation in the designation, under subsection (1)(a) of this  
22 section, used for the same name;

23 (b) The addition or deletion of an article or conjunction such as  
24 "the" or "and" from the same name;

25 (c) Punctuation, capitalization, or special characters or symbols  
26 in the same name; or

27 (d) Use of abbreviation or the plural form of a word in the same  
28 name.

29 **Sec. 1305.** RCW 24.03.045 and 1989 c 291 s 10 are each amended to  
30 read as follows:

31 The corporate name:

32 (1) Shall not contain any word or phrase which indicates or implies  
33 that it is organized for any purpose other than one or more of the  
34 purposes contained in its articles of incorporation.

35 (2) Shall not be the same as, or deceptively similar to, the name  
36 of any corporation, whether for profit or not for profit, existing  
37 under any act of this state, or any foreign corporation, whether for  
38 profit or not for profit, authorized to transact business or conduct

1 affairs in this state, any foreign or domestic limited liability  
2 company on file with the secretary of state, any domestic or foreign  
3 limited partnership on file with the secretary, or a limited  
4 partnership existing under chapter 25.10 RCW, or a corporate name  
5 reserved or registered as permitted by the laws of this state. This  
6 subsection shall not apply if the applicant files with the secretary of  
7 state either of the following: (a) The written consent of the other  
8 corporation, limited liability company, limited partnership, or holder  
9 of a reserved name to use the same or deceptively similar name and one  
10 or more words are added or deleted to make the name distinguishable  
11 from the other name as determined by the secretary of state, or (b) a  
12 certified copy of a final decree of a court of competent jurisdiction  
13 establishing the prior right of the applicant to the use of the name in  
14 this state.

15 (3) Shall be transliterated into letters of the English alphabet,  
16 if it is not in English.

17 (4) Shall not include or end with "incorporated," "company,"  
18 "corporation," "partnership," "limited partnership," or "Ltd.," or any  
19 abbreviation thereof, but may use "club," "league," "association,"  
20 "services," "committee," "fund," "society," "foundation," ". . . . . ,  
21 a nonprofit corporation," or any name of like import.

22 (5) May only include the term "public benefit" or names of like  
23 import if the corporation has been designated as a public benefit  
24 nonprofit corporation by the secretary in accordance with this chapter.

25 **Sec. 1306.** RCW 24.03.047 and 1993 c 356 s 2 are each amended to  
26 read as follows:

27 Any corporation, organized and existing under the laws of any state  
28 or territory of the United States may register its corporate name under  
29 this title, provided its corporate name is not the same as, or  
30 deceptively similar to, the name of any domestic corporation existing  
31 under the laws of this state, the name of any foreign corporation  
32 authorized to transact business in this state, the name of any domestic  
33 limited liability company organized under the laws of this state, the  
34 name of any foreign limited liability company authorized to transact  
35 business in this state, the name of any limited partnership on file  
36 with the secretary, or any corporate name reserved or registered under  
37 this title.

38 Such registration shall be made by:

1 (1) Filing with the secretary of state: (a) An application for  
2 registration executed by the corporation by an officer thereof, setting  
3 forth the name of the corporation, the state or country under the laws  
4 of which it is incorporated, [and] the date of its incorporation, and  
5 (b) a certificate setting forth that such corporation is in good  
6 standing under the laws of the state or territory wherein it is  
7 organized, executed by the secretary of state of such state or country  
8 or by such other official as may have custody of the records pertaining  
9 to corporations, and

10 (2) Paying to the secretary of state the applicable registration  
11 fee.

12 The registration shall be effective until the close of the calendar  
13 year in which the application for registration is filed.

14 **Sec. 1307.** RCW 24.06.045 and 1987 c 55 s 41 are each amended to  
15 read as follows:

16 The corporate name:

17 (1) Shall not contain any word or phrase which indicates or implies  
18 that it is organized for any purpose other than one or more of the  
19 purposes contained in its articles of incorporation.

20 (2) Shall not be the same as, or deceptively similar to, the name  
21 of any corporation existing under any act of this state, or any foreign  
22 corporation authorized to transact business or conduct affairs in this  
23 state under any act of this state, or the name of any limited liability  
24 corporation organized or authorized to transact business under any act  
25 of this state, the name of a domestic or foreign limited partnership on  
26 file with the secretary, or a corporate name reserved or registered as  
27 permitted by the laws of this state. This subsection shall not apply  
28 if the applicant files with the secretary of state either of the  
29 following: (a) The written consent of the other corporation, limited  
30 liability company, limited partnership, or holder of a reserved name to  
31 use the same or deceptively similar name and one or more words are  
32 added or deleted to make the name distinguishable from the other name  
33 as determined by the secretary of state, or (b) a certified copy of a  
34 final decree of a court of competent jurisdiction establishing the  
35 prior right of the applicant to the use of the name in this state.

36 (3) Shall be transliterated into letters of the English alphabet if  
37 it is not in English.

1 (4) The name of any corporation formed under this section shall not  
2 include nor end with "incorporated", "company", or "corporation" or any  
3 abbreviation thereof, but may use "club", "league", "association",  
4 "services", "committee", "fund", "society", "foundation", ". . . . . ,  
5 a nonprofit mutual corporation", or any name of like import.

6 **Sec. 1308.** RCW 24.06.047 and 1993 c 356 s 14 are each amended to  
7 read as follows:

8 Any corporation, organized and existing under the laws of any state  
9 or territory of the United States may register its corporate name under  
10 this title, provided its corporate name is not the same as, or  
11 deceptively similar to, the name of any domestic corporation existing  
12 under the laws of this state, or the name of any foreign corporation  
13 authorized to transact business in this state, the name of any domestic  
14 limited liability company organized under the laws of this state, or  
15 the name of any foreign limited liability company authorized to  
16 transact business in this state, the name of any domestic or foreign  
17 limited partnership on file with the secretary, or any corporate name  
18 reserved or registered under this title.

19 Such registration shall be made by:

20 (1) Filing with the secretary of state: (a) An application for  
21 registration executed by the corporation by an officer thereof, setting  
22 forth the name of the corporation, the state or country under the laws  
23 of which it is incorporated, and the date of its incorporation, and (b)  
24 a certificate setting forth that such corporation is in good standing  
25 under the laws of the state or country wherein it is organized,  
26 executed by the secretary of state of such state or territory or by  
27 such other official as may have custody of the records pertaining to  
28 corporations, and

29 (2) Paying to the secretary of state the applicable annual  
30 registration fee.

31 The registration shall be effective until the close of the calendar  
32 year in which the application for registration is filed.

33 **Sec. 1309.** RCW 25.10.020 and 1991 c 269 s 1 are each amended to  
34 read as follows:

35 (1) The name of each limited partnership formed pursuant to this  
36 chapter as set forth in its certificate of limited partnership:

1 (a) Shall contain the words "limited partnership" or the  
2 abbreviation "L.P.";

3 (b) May not contain the name of a limited partner unless (i) it is  
4 also the name of a general partner, or the corporate name of a  
5 corporate general partner, or (ii) the business of the limited  
6 partnership had been carried on under that name before the admission of  
7 that limited partner;

8 (c) May not contain any of the following words or phrases: "Bank",  
9 "banking", "banker", "trust", "cooperative"; or any combination of the  
10 words "industrial" and "loan"; or any combination of any two or more of  
11 the words "building", "savings", "loan", "home", "association" and  
12 "society"; or any other words or phrases prohibited by any statute of  
13 this state;

14 (d) Except as authorized by subsections (2) and (3) of this  
15 section, must be distinguishable upon the records of the secretary of  
16 state from:

17 (i) The name or reserved name of a foreign or domestic limited  
18 partnership;

19 (ii) The corporate name of a corporation incorporated or authorized  
20 to transact business in this state;

21 (iii) A corporate name reserved or registered under RCW 23B.04.020  
22 or 23B.04.030;

23 (iv) The fictitious name adopted pursuant to RCW 23B.15.060 by a  
24 foreign corporation authorized to transact business in this state  
25 because its real name is unavailable; (~~and~~)

26 (v) The corporate name of a not-for-profit corporation incorporated  
27 or authorized to conduct affairs in this state; and

28 (vi) The name of a limited liability company organized or  
29 authorized to transact business in this state.

30 (2) A limited partnership may apply to the secretary of state for  
31 authorization to use a name that is not distinguishable upon the  
32 records from one or more of the names described in subsection (1) of  
33 this section. The secretary of state shall authorize use of the name  
34 applied for if:

35 (a) The other limited partnership, corporation, or holder consents  
36 to the use in writing and files with the secretary of state documents  
37 necessary to change its name or the name reserved or registered to a  
38 name that is distinguishable upon the records of the secretary of state  
39 from the name of the applying limited partnership; or

1 (b) The applicant delivers to the secretary of state a certified  
2 copy of the final judgment of a court of competent jurisdiction  
3 establishing the applicant's right to use the name applied for in this  
4 state.

5 (3) A limited partnership may use the name, including the  
6 fictitious name, of another domestic or foreign limited partnership,  
7 limited liability company, or corporation that is used in this state if  
8 the other limited partnership, limited liability company, or  
9 corporation is organized, incorporated, or authorized to transact  
10 business in this state and the proposed user limited partnership:

11 (a) Has merged with the other limited partnership, limited  
12 liability company, or corporation; or

13 (b) Results from reorganization with the other limited partnership,  
14 limited liability company, or corporation.

15 (4) A name shall not be considered distinguishable upon the records  
16 of the secretary of state by virtue of:

17 (a) A variation in the designation, under subsection (1)(a) of this  
18 section, used for the same name;

19 (b) The addition or deletion of an article or conjunction such as  
20 "the" or "and" from the same name;

21 (c) Punctuation, capitalization, or special characters or symbols  
22 in the same name; or

23 (d) Use of abbreviation or the plural form of a word in the same  
24 name.

25 (5) This title does not control the use of assumed business names  
26 or "trade names."

27 **Sec. 1310.** RCW 43.07.120 and 1993 c 269 s 15 are each amended to  
28 read as follows:

29 (1) The secretary of state shall establish by rule and collect the  
30 fees in this subsection:

31 (a) For a copy of any law, resolution, record, or other document or  
32 paper on file in the secretary's office;

33 (b) For any certificate under seal;

34 (c) For filing and recording trademark;

35 (d) For each deed or patent of land issued by the governor;

36 (e) For recording miscellaneous records, papers, or other  
37 documents.

1 (2) The secretary of state may adopt rules under chapter 34.05 RCW  
2 establishing reasonable fees for the following services rendered under  
3 Title 23B RCW, chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12,  
4 24.20, 24.24, 24.28, 24.36, 25.-- (sections 101 through 1303 and 1312  
5 through 1314 of this act), or 25.10 RCW:

6 (a) Any service rendered in-person at the secretary of state's  
7 office;

8 (b) Any expedited service;

9 (c) The electronic or facsimile transmittal of information from  
10 corporation records or copies of documents;

11 (d) The providing of information by micrographic or other reduced-  
12 format compilation;

13 (e) The handling of checks, drafts, or credit or debit cards upon  
14 adoption of rules authorizing their use for which sufficient funds are  
15 not on deposit; and

16 (f) Special search charges.

17 (3) To facilitate the collection of fees, the secretary of state  
18 may establish accounts for deposits by persons who may frequently be  
19 assessed such fees to pay the fees as they are assessed. The secretary  
20 of state may make whatever arrangements with those persons as may be  
21 necessary to carry out this section.

22 (4) The secretary of state may adopt rules for the use of credit or  
23 debit cards for payment of fees.

24 (5) No member of the legislature, state officer, justice of the  
25 supreme court, judge of the court of appeals, or judge of the superior  
26 court shall be charged for any search relative to matters pertaining to  
27 the duties of his or her office; nor may such official be charged for  
28 a certified copy of any law or resolution passed by the legislature  
29 relative to his or her official duties, if such law has not been  
30 published as a state law.

31 **Sec. 1311.** RCW 43.07.130 and 1991 c 72 s 54 are each amended to  
32 read as follows:

33 There is created within the state treasury a revolving fund, to be  
34 known as the "secretary of state's revolving fund," which shall be used  
35 by the office of the secretary of state to defray the costs of  
36 printing, reprinting, or distributing printed matter authorized by law  
37 to be issued by the office of the secretary of state, and any other  
38 cost of carrying out the functions of the secretary of state under

1 Title 23B RCW, or chapters 18.100, 23.86, 23.90, 24.03, 24.06, 24.12,  
2 24.20, 24.24, 24.28, 24.36, 25.-- (sections 101 through 1303 and 1312  
3 through 1314 of this act), or 25.10 RCW.

4 The secretary of state is hereby authorized to charge a fee for  
5 such publications in an amount which will compensate for the costs of  
6 printing, reprinting, and distributing such printed matter. Fees  
7 recovered by the secretary of state under RCW 43.07.120(2),  
8 23B.01.220(1)(e), (~~(3)~~, and ~~(4)~~) (6) and (7), 23B.18.050, 24.03.410,  
9 24.06.455, or 46.64.040, and such other moneys as are expressly  
10 designated for deposit in the secretary of state's revolving fund shall  
11 be placed in the secretary of state's revolving fund.

12 NEW SECTION. **Sec. 1312.** EFFECTIVE DATE. This act shall take  
13 effect October 1, 1994.

14 NEW SECTION. **Sec. 1313.** SHORT TITLE. This chapter may be cited  
15 as the "Washington Limited Liability Company Act."

16 NEW SECTION. **Sec. 1314.** SEVERABILITY. If any provision of this  
17 act or its application to any person or circumstance is held invalid,  
18 the remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 1315.** LEGISLATIVE DIRECTIVE. Sections 101  
21 through 1303 and 1312 through 1314 of this act shall constitute a new  
22 chapter in Title 25 RCW.

23 **ACCOUNTANCY STATUTES**

24 **Sec. 1401.** RCW 18.04.025 and 1992 c 103 s 2 are each amended to  
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Board" means the board of accountancy created by RCW  
29 18.04.035.

30 (2) "Certified public accountant" or "CPA" means a person holding  
31 a certified public accountant certificate.

32 (3) "State" includes the states of the United States, the District  
33 of Columbia, Puerto Rico, Guam, and the United States Virgin Islands.

1 (4) "Reports on financial statements" means any reports or opinions  
2 prepared by certified public accountants, based on services performed  
3 in accordance with generally accepted auditing standards, standards for  
4 attestation engagements, or standards for accounting and review  
5 services as to whether the presentation of information used for  
6 guidance in financial transactions or for accounting for or assessing  
7 the status or performance of commercial and noncommercial enterprises,  
8 whether public, private, or governmental, conforms with generally  
9 accepted accounting principles or other comprehensive bases of  
10 accounting.

11 (5) The "practice of public accounting" means performing or  
12 offering to perform by a person or firm holding itself out to the  
13 public as a licensee, for a client or potential client, one or more  
14 kinds of services involving the use of accounting or auditing skills,  
15 including the issuance of "audit reports," "review reports," or  
16 "compilation reports" on financial statements, or one or more kinds of  
17 management advisory, or consulting services, or the preparation of tax  
18 returns, or the furnishing of advice on tax matters. The "practice of  
19 public accounting" shall not include practices that are permitted under  
20 the provisions of RCW 18.04.350(6) by persons or firms not required to  
21 be licensed under this chapter.

22 (6) "Firm" means a sole proprietorship, a corporation, or a  
23 partnership. "Firm" also means a limited liability company formed  
24 under chapter 25.-- RCW (sections 101 through 1303 and 1312 through  
25 1314 of this act).

26 (7) "CPE" means continuing professional education.

27 (8) "Certificate" means a certificate as a certified public  
28 accountant issued under this chapter, or a corresponding certificate  
29 issued by another state or foreign jurisdiction that is recognized in  
30 accordance with the reciprocity provisions of RCW 18.04.180 and  
31 18.04.183.

32 (9) "Licensee" means the holder of a valid license issued under  
33 this chapter.

34 (10) "License" means a biennial license to practice public  
35 accountancy issued to an individual or firm under this chapter.

36 (11) "Quality assurance review" means a process established by and  
37 conducted at the direction of the board of study, appraisal, or review  
38 of one or more aspects of the professional work of a person or firm in  
39 the practice of public accountancy, by a person or persons who hold

1 certificates and who are not affiliated with the person or firm being  
2 reviewed.

3 (12) "Quality review" means a study, appraisal, or review of one or  
4 more aspects of the professional work of a person or firm in the  
5 practice of public accountancy, by a person or persons who hold  
6 certificates and who are not affiliated with the person or firm being  
7 reviewed, including a peer review, or any internal review or inspection  
8 intended to comply with quality control policies and procedures, but  
9 not including the "quality assurance review" under subsection (11) of  
10 this section.

11 (13) "Review committee" means any person carrying out,  
12 administering or overseeing a quality review authorized by the  
13 reviewee.

14 (14) "Rule" means any rule adopted by the board under authority of  
15 this chapter.

16 (15) "Holding out" means any representation to the public by the  
17 use of restricted titles as set forth in RCW 18.04.345 by a person or  
18 firm that the person or firm is a certified public accountant and that  
19 the person or firm offers to perform any professional services to the  
20 public as a certified public accountant. "Holding out" shall not  
21 affect or limit a person not required to hold a certificate under this  
22 chapter or a person or firm not required to hold a license under this  
23 chapter from engaging in practices identified in RCW 18.04.350(6).

24 **Sec. 1402.** RCW 18.04.195 and 1986 c 295 s 8 are each amended to  
25 read as follows:

26 (1) A sole proprietorship engaged in this state in the practice of  
27 public accounting shall license biennially with the board as a firm.

28 (a) The principal purpose and business of the firm shall be to  
29 furnish services to the public which are consistent with this chapter  
30 and the rules of the board.

31 (b) The person shall be a certified public accountant holding a  
32 license to practice under RCW 18.04.215.

33 (c) Each resident licensee in charge of an office of the sole  
34 proprietorship engaged in this state in the practice of public  
35 accounting shall be a certified public accountant holding a license to  
36 practice under RCW 18.04.215.

37 (2) A partnership engaged in this state in the practice of public  
38 accounting shall license biennially with the board as a partnership of

1 certified public accountants, and shall meet the following  
2 requirements:

3 (a) The principal purpose and business of the partnership shall be  
4 to furnish services to the public which are consistent with this  
5 chapter and the rules of the board;

6 (b) At least one general partner of the partnership shall be a  
7 certified public accountant holding a license to practice under RCW  
8 18.04.215;

9 (c) Each resident licensee in charge of an office of the  
10 partnership in this state and each resident partner personally engaged  
11 within this state in the practice of public accounting shall be a  
12 certified public accountant holding a license to practice under RCW  
13 18.04.215.

14 (3) A corporation organized for the practice of public accounting  
15 and engaged in this state in the practice of public accounting shall  
16 license biennially with the board as a corporation of certified public  
17 accountants and shall meet the following requirements:

18 (a) The principal purpose and business of the corporation shall be  
19 to furnish services to the public which are consistent with this  
20 chapter and the rules of the board; and

21 (b) Each shareholder of the corporation shall be a certified public  
22 accountant of some state holding a license to practice and shall be  
23 principally employed by the corporation or actively engaged in its  
24 business. No other person may have any interest in the stock of the  
25 corporation. The principal officer of the corporation and any officer  
26 or director having authority over the practice of public accounting by  
27 the corporation shall be a certified public accountant of some state  
28 holding a license to practice;

29 (c) At least one shareholder of the corporation shall be a  
30 certified public accountant holding a license to practice under RCW  
31 18.04.215;

32 (d) Each resident licensee in charge of an office of the  
33 corporation in this state and each shareholder or director personally  
34 engaged within this state in the practice of public accounting shall be  
35 a certified public accountant holding a license to practice under RCW  
36 18.04.215;

37 (e) A written agreement shall bind the corporation or its  
38 shareholders to purchase any shares offered for sale by, or not under  
39 the ownership or effective control of, a qualified shareholder, and

1 bind any holder not a qualified shareholder to sell the shares to the  
2 corporation or its qualified shareholders. The agreement shall be  
3 noted on each certificate of corporate stock. The corporation may  
4 purchase any amount of its stock for this purpose, notwithstanding any  
5 impairment of capital, as long as one share remains outstanding; and

6 (f) The corporation shall comply with any other rules pertaining to  
7 corporations practicing public accounting in this state as the board  
8 may prescribe.

9 (4) A limited liability company engaged in this state in the  
10 practice of public accounting shall license biennially with the board  
11 as a limited liability company of certified public accountants, and  
12 shall meet the following requirements:

13 (a) The principal purpose and business of the limited liability  
14 company shall be to furnish services to the public which are consistent  
15 with this chapter and the rules of the board;

16 (b) At least one manager of the limited liability company shall be  
17 a certified public accountant holding a license to practice under RCW  
18 18.04.215;

19 (c) Each resident manager or member in charge of an office of the  
20 limited liability company in this state and each resident manager or  
21 member personally engaged within this state in the practice of public  
22 accounting shall be a certified public accountant holding a license to  
23 practice under RCW 18.04.215.

24 (5) Application for a license as a firm shall be made upon the  
25 affidavit of the proprietor or person designated as managing partner or  
26 shareholder for Washington. This person shall be a certified public  
27 accountant holding a license to practice under RCW 18.04.215. The  
28 board shall determine in each case whether the applicant is eligible  
29 for a license. A partnership or corporation which is licensed to  
30 practice under RCW 18.04.215 may use the designation "certified public  
31 accountants" or "CPAs" in connection with its partnership or corporate  
32 name. The board shall be given notification within ninety days after  
33 the admission or withdrawal of a partner or shareholder engaged in this  
34 state in the practice of public accounting from any partnership or  
35 corporation so licensed.

36 ((+5)) (6) Fees for the license as a firm and for notification of  
37 the board of the admission or withdrawal of a partner or shareholder  
38 shall be determined by the board. Fees shall be paid by the firm at

1 the time the license application form or notice of admission or  
2 withdrawal of a partner or shareholder is filed with the board.

3 NEW SECTION. **Sec. 1403.** Any business or profession licensed under  
4 this title may operate as a limited liability company formed under  
5 chapter 25.-- RCW (sections 101 through 1303 and 1312 through 1314 of  
6 this act). Any such limited liability company must be licensed as a  
7 limited liability company in accordance with the otherwise applicable  
8 licensing provisions of this title. Any such limited liability company  
9 shall meet the following requirements:

10 (1) The principal purpose and business of the limited liability  
11 company shall be to furnish services to the public which are consistent  
12 with the applicable chapter under this title;

13 (2) At least one manager of the limited liability company shall be  
14 a person licensed under the applicable chapter under this title; and

15 (3) Each resident manager or member in charge of an office of the  
16 limited liability company in this state and each resident manager or  
17 member personally engaged within this state in the business or  
18 profession of the company shall be licensed under the applicable  
19 chapter under this title.

20 NEW SECTION. **Sec. 1404.** Section 1403 of this act constitutes a  
21 new chapter in Title 18 RCW.

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