

# Missouri Revised Statutes

## Chapter 347

### Limited Liability Companies--Merger and Consolidation of Business Organizations

- [←Chapter: 346](#)
- [Chapter: 348→](#) August 28, 2015

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#### Name of law.

[347.010](#). Sections [347.010](#) to [347.187](#) shall be known and may be cited as the "Missouri Limited Liability Company Act".

(L. 1993 S.B. 66 & 20 § 359.700)

Effective 12-1-93

#### Definitions.

[347.015](#). As used in sections [347.010](#) to [347.187](#), the following terms mean:

(1) "Articles of organization", the articles referred to in section [347.039](#), filed with the secretary for the purpose of forming a limited liability company, as the same may be amended or restated from time to time as provided in sections [347.010](#) to [347.187](#);

(2) "Authorized person", manager, or member, if management of the limited liability company is vested in the members;

(3) "Bankruptcy", the entry of an order for relief by the court in a proceeding under the United States Bankruptcy Code, Title 11, U.S.C., as amended, or its equivalent under a state insolvency act or a similar law of other jurisdictions;

(4) "Business" includes every trade, occupation or profession;

(5) "Contribution", cash, other property, the use of property, services rendered, a promissory note or other binding obligation to contribute cash or property or perform services or any other valuable consideration transferred by a person to the limited liability company as a prerequisite for membership in the limited liability company and any subsequent transfer to the limited liability company by a person in his capacity as a member;

(6) "Court" includes every court and judge having jurisdiction in the case;

(7) "Domestic limited liability company" or "limited liability company", a limited liability company organized and existing under sections [347.010](#) to [347.187](#);

(8) "Event of withdrawal", an event that causes a person to cease to be a member as provided in section [347.123](#);

(9) "Foreign limited liability company", a limited liability company formed under the laws of any jurisdiction other than the state of Missouri;

(10) "Manager", with respect to a limited liability company whose articles of organization state that management of the limited liability company is vested in one or more managers, the person or persons designated, appointed or elected as such in the manner provided in subsection 2 of section [347.079](#);

(11) "Member", any person that signs in person or by an attorney in fact, or otherwise is a party to the operating agreement at the time the limited liability company is formed and is identified as a member in that operating agreement and any person who is subsequently admitted as a member in a limited liability company in accordance with sections [347.010](#) to [347.187](#) and the operating agreement, until such time as an event of withdrawal occurs with respect to such person;

(12) "Member's interest", a member's share of the profits and losses of a limited liability company and the right to receive distributions of limited liability company assets;

(13) "Operating agreement", any valid agreement or agreements, written or oral, among all members, or written declaration by the sole member concerning the conduct of the business and affairs of the limited liability company and the relative rights, duties and obligations of the members and managers, if any;

(14) "Organizer", any of the signers of the articles of organization;

(15) "Person" includes individuals, partnerships, domestic or foreign limited partnerships, domestic or foreign limited liability companies, domestic or foreign corporations, trusts, business trusts, employee stock ownership trusts, real estate investment trusts, estates, associations, and other business or not-for-profit entities;

(16) "Real property" includes land, any interest, leasehold or estate in land and any improvements thereon;

(17) "Secretary", the secretary of state for the state of Missouri and its delegates responsible for the administration of sections [347.010](#) to [347.187](#);

(18) "Surviving entity", the surviving or resulting person pursuant to a merger or consolidation in which one or more domestic limited liability companies are parties.

(L. 1993 S.B. 66 & 20 § 359.702, A.L. 1996 H.B. 1368, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

### **Single member companies, compliance with this chapter.**

[347.017](#). No limited liability company formed before the effective date of this act\*, shall be deemed not in compliance with this chapter for the reason that such limited liability company was formed with, had or has only one member.

(L. 1997 H.B. 655 merged with S.B. 170)

\*Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

### **Name of company regulated.**

[347.020](#). The name of each limited liability company as set forth in its articles of organization:

(1) Shall contain the words "limited company" or "limited liability company" or the abbreviation "LC", "LLC", "L.C." or "L.L.C." and shall be the name under which the limited liability company transacts business in this state unless the limited liability company registers another name under which it transacts business as provided under chapter 417 or conspicuously discloses its name as set forth in its articles of organization;

(2) May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or "Ltd." or any abbreviation of one of such words or any word or phrase which indicates or implies that it is organized for any purpose not stated in its articles of organization or that it is a governmental agency; and

(3) Must be distinguishable upon the records of the secretary from the name of any corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership which is licensed, organized, reserved, or registered under the laws of this state as a domestic or foreign entity, unless:

(a) Such other holder of a reserved or registered name consents to such use in writing and files appropriate documentation to the secretary to change its name to a name that is distinguishable upon the records of the secretary from the name of the applying limited liability company; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state is filed with the secretary.

(L. 1993 S.B. 66 & 20 § 359.704, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2004 H.B. 1664)

### **Name may be reserved, how, time period.**

[347.025](#). 1. The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under sections [347.010](#) to [347.187](#) and to adopt that name;

(2) Any domestic limited liability company intending to adopt that name;

(3) Any foreign limited liability company registered in this state intending to adopt that name or intending to register in this state and to adopt that name; or

(4) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and to adopt that name.

2. The reservation shall be made by filing with the secretary in a format prescribed by the secretary, executed by the applicant, to reserve a specified name. If the secretary finds that the name is not registered with the secretary as a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership, and is otherwise available for use, it shall reserve the name for the exclusive use of the applicant for a period of sixty days from and after the date the application is filed with the state. A name reservation shall not exceed a period of one hundred eighty days from the date of the first name reservation application. Upon the one hundred eighty-first day the name shall cease reserve status and may not be placed back in such status.

(L. 1993 S.B. 66 & 20 § 359.705, A.L. 2004 H.B. 1664)

**Maintenance of office and agent for service of process--change of office or agent, filing, contents--effective, when--change upon filing by agent, contents--agent may resign, filing, contents.**

347.030. 1. Each limited liability company shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as a place of its business in this state;

(2) A registered agent for service of any process, notice or demand required or permitted by law to be served upon the limited liability company, which agent may be either an individual, resident of this state, whose business office is identical with such registered office, or a domestic or foreign corporation authorized to do business in this state, and whose business office is identical with such registered office. Except as provided in this section and subdivision (5) of section 347.153, the secretary shall not be appointed as the resident agent for any limited liability company.

2. A limited liability company may, from time to time, change its registered agent or the address of its registered office. A limited liability company shall change its registered agent if the office of its registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapacitated to act, or if the limited liability company revokes the appointment of its registered agent. A limited liability company may change its registered agent or the address of its registered office, or both, by a filing with the secretary, a statement setting forth:

(1) The name of the limited liability company;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent and the successor registered agent's written consent to the appointment either on the statement or attached thereto;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by the limited liability company.

3. The change of address of the registered office, or the change of the registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary.

4. If a registered agent changes the street address of his business office, he may change the street address of the registered office of any limited liability company for which he is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subdivisions (1) to (6) of subsection 2 of this section and recites that the limited liability company has been notified of the change.

5. The change of an address of the registered office shall become effective upon the filing of the statement by the secretary.

6. Any registered agent of a limited liability company may resign as such agent by the filing with the secretary duplicate originals of a statement, on a form approved by the secretary, setting forth:

(1) The name of the limited liability company;

(2) The address, including street and number, if any, of its then registered office;

(3) The name of such registered agent; and

(4) A representation that such registered agent has given written notice of such agent's resignation and a copy of such statement to the limited liability company. Such resignation shall become effective upon expiration of thirty days after receipt of such statement by the secretary, or on the appointment of a new registered agent, whichever occurs earlier.

(L. 1993 S.B. 66 & 20 § 359.706, A.L. 1998 S.B. 844)

**Service upon agent deemed service on company--service upon organizer--secretary of state deemed agent of company, when.**

**347.033.** 1. The registered agent so appointed by a limited liability company shall be an agent of such limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the limited liability company may be served, and which, when so served, shall be lawful personal service on the limited liability company.

2. In lieu of service upon the registered agent, process, notice or demand may be served upon an authorized person or in the event neither the registered agent nor an authorized person can be

located in the exercise of due diligence, process, notice or demand may be served upon an organizer.

3. In the event that a limited liability company shall fail to appoint or maintain a registered agent in this state or in the event neither the registered agent, an authorized person, nor an organizer for the limited liability company can be located in the exercise of due diligence, then the secretary, as long as such default exists, shall be automatically appointed as an agent of such limited liability company upon whom any process, notice, or demand required or permitted by law to be served upon the limited liability company may be served. Service on the secretary of any process, notice or demand against a limited liability company shall be made by delivering to and leaving with the secretary, or with any clerk having charge of the limited liability company department of the secretary, a copy of such process, notice or demand. In the event that any process, notice or demand is served on the secretary, the secretary shall immediately cause a copy thereof to be forwarded by registered mail, to the address for any organizer as set forth in the articles of organization. The secretary shall keep copies of any process, notice or demand served upon the secretary pursuant to sections [347.010](#) to [347.187](#) for a period of five years. Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

(L. 1993 S.B. 66 & 20 § 359.708)

Effective 12-1-93

#### **Organization authorized, purpose.**

[347.035](#). A limited liability company may be organized under sections [347.010](#) to [347.187](#) and may conduct or promote any lawful businesses or purposes within this state or any other jurisdiction.

(L. 1993 S.B. 66 & 20 § 359.710)

Effective 12-1-93

#### **Formation, articles of organization--when effective--filing,effect--company may not incur debt before filing--actions beforefiling, effect.**

[347.037](#). 1. Any person, whether or not a member or manager, may form a limited liability company by signing and filing articles of organization for such limited liability company with the secretary.

2. A limited liability company is formed when the articles of organization are filed with the secretary or on a later date set forth in the articles of organization, not to exceed ninety days from the filing date. If the articles of organization, as delivered to the secretary, do not substantially conform to the filing provisions of sections [347.010](#) to [347.187](#), the secretary shall return the articles of organization to the person so filing the articles of organization with a statement setting forth the nonconformity.

3. Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under sections [347.010](#) to [347.187](#) and is notice for all purposes of all other facts required to be set forth therein.

4. A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the secretary or until the formation date specified in the articles of organization. Persons engaged in prefiling activities other than those described in the preceding sentence shall be jointly and severally liable except as provided in this section for any debts or liabilities incurred in the course of those activities. This section shall not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred solely on behalf of a limited liability company to be formed, nor shall it be interpreted to impose personal liability on the persons incurring such debts, contracts or liabilities solely on behalf of the limited liability company to the extent so disclosed or to the extent such debts, contracts or liabilities provide otherwise.

(L. 1993 S.B. 66 & 20 § 359.716, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

#### **Articles, contents.**

[347.039](#). 1. The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The purpose or purposes for which the limited liability company is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which a limited liability company may be organized under sections [347.010](#) to [347.187](#);

(3) The address, including street and number, if any, of the registered office and the name of the registered agent at such office;

(4) A statement as to whether management of the limited liability company is vested in managers or in members;

(5) The events by which the limited liability company is to dissolve or the number of years the limited liability company is to exist, which may be any number or perpetual; and

(6) The name and physical business or residence address of each organizer.

2. The information provided by the limited liability company under subdivisions (1) through (6) of subsection 1 of this section shall also be provided for each separate series of the limited liability company authorized to operate under section [347.186](#).

3. The articles of organization may set forth any other provision, not inconsistent with law or sections [347.010](#) to [347.187](#), which are in the operating agreement of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.718, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 1998 S.B. 844, A.L. 2004 H.B. 1664, A.L. 2013 H.B. 510)

#### **Articles of amendment, contents--amendments required, when.**

[347.041](#). 1. A limited liability company's articles of organization is amended by filing with the secretary articles of amendment, which shall set forth:

(1) The name of the limited liability company;

(2) The date the articles of amendment are filed, and, if the articles of amendment provide that they are not to become effective until a specified date after their filing date, the date that they are to become effective which may not be more than ninety days after their filing date;

(3) If the amendment is required to be filed as a result of the occurrence of any event specified in subdivision (2) of subsection 2 of this section, the nature of the event and the date such event occurred or is to occur;

(4) The amendment to the articles of organization; and

(5) A statement that the amendment is authorized under the operating agreement or is otherwise required to be filed under the provisions of sections [347.010](#) to [347.187](#).

2. A limited liability company's articles of organization shall be amended promptly, but in no event more than sixty days after the occurrence of any of the following events:

(1) To reflect any change in management of the limited liability company that was previously vested whether in managers or members;

(2) To reflect a change in the name of the limited liability company; or

(3) To reflect a change in the time set forth in the articles of organization for the limited liability company to dissolve.

3. Except as otherwise provided in the operating agreement, a limited liability company's articles of organization may be amended from time to time in any and as many respects as may be desired so long as its articles of organization contain only such provisions as are contained in the operating agreement at the time of making such amendment.

(L. 1993 S.B. 66 & 20 § 359.720, A.L. 2004 H.B. 1664)

#### **Restated articles of organization--contents.**

[347.043](#). 1. A limited liability company may integrate into a single instrument all of the provisions of its articles of organization and amendments thereto, and it may at the same time also further amend or supplement its articles of organization by adopting restated articles of organization as follows:

(1) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any articles, notices or documents that were executed and filed pursuant to sections [347.010](#) to [347.187](#), it shall be specifically designated in its heading as "Restated Articles of Organization", together with a statement that it only restates and integrates and does not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, and shall be executed and filed with the secretary; or

(2) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, it shall be specifically designated in its heading as "Amended and Restated Articles of Organization", and shall be executed and filed with the secretary.

2. Restated articles of organization shall state, either in their heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its initial articles of organization.

3. Upon the filing of the restated articles of organization with the secretary, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

4. Any amendment or change made in connection with the restatement of the articles of organization shall be subject to any other provision of sections [347.010](#) to [347.187](#), not inconsistent with this section, that would apply if separate articles of amendment were filed to make the amendment or change.

(L. 1993 S.B. 66 & 20 § 359.722)

Effective 12-1-93

#### **Articles of termination--contents.**

[347.045](#). When all of the remaining property and assets of a limited liability company have been applied and distributed as provided in section [347.139](#) or when a domestic limited liability company is not the surviving entity, the articles of organization shall be cancelled by filing articles of termination with the secretary setting forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its articles of organization;
- (3) The reason for filing the articles of termination;

(4) The date the articles of termination are filed, and, if such articles of termination provide that they are not to become effective until a specified date after their filing date, the effective date of such articles of termination, which shall be in no event more than ninety days after their filing date;

(5) That a notice of merger or consolidation or a notice of winding up disclosing the dissolution has been filed with the secretary as provided in section [347.129](#) or [347.137](#), as the case may be, and the date on which such notice was filed; and

(6) Any other matters which the members shall determine.

(L. 1993 S.B. 66 & 20 § 359.724)

Effective 12-1-93

#### **Execution of documents, manner--affirmation.**

[347.047](#). 1. Unless otherwise provided in sections [347.010](#) to [347.187](#), articles, notices or documents permitted or required by sections [347.010](#) to [347.187](#) to be filed with the secretary shall be executed in the following manner:

(1) The initial articles of organization shall be executed by the organizer or organizers;

(2) An amended or restated articles of organization, statement of change of registered agent or registered office, notice of merger or consolidation, notice of winding up, articles of termination or other document required or permitted to be filed under sections [347.010](#) to [347.187](#) shall be executed by an authorized person or any other person duly authorized under the operating agreement; and

(3) All articles, notices and documents required by sections [347.010](#) to [347.187](#) to be filed by a limited liability company which is in the hands of a receiver, trustee, or other court-appointed fiduciary, shall be executed by such fiduciary.

2. The original, amended or restated articles of organization, notice of winding up, notice of merger or consolidation, articles of termination or other document required or permitted to be filed under sections [347.010](#) to [347.187](#) may be executed by a person duly authorized under a power of attorney.

3. The execution of any document required by sections [347.010](#) to [347.187](#) constitutes an affirmation under the penalties as set out in section [575.040](#) that the facts stated therein are true and that such person or persons are duly authorized to execute such document or are otherwise required to file such document under sections [347.010](#) to [347.187](#).

(L. 1993 S.B. 66 & 20 § 359.725, A.L. 2004 H.B. 1664)

#### **Affidavit filing required for certain limited liability companies.**

[347.048](#). Any limited liability company that owns and rents or leases real property, or owns unoccupied real property, located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person who has management control and responsibility for the real property owned and leased or rented by the limited liability company, or owned by the limited liability company and unoccupied.

(L. 2001 S.B. 288)

Effective 7-01-01

**Failure to execute documents, action to direct execution.**

[347.049](#). If a person required by section [347.047](#) to execute articles, notices or documents required to be filed pursuant to sections [347.010](#) to [347.187](#) fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court in the county where the principal place of business or the registered office of the limited liability company is located to direct the execution and filing of such document. If the court finds that it is proper for such document to be executed and filed and that there has been failure or refusal to execute and file such document, it shall order the secretary to file the appropriate document.

(L. 1993 S.B. 66 & 20 § 359.726)

Effective 12-1-93

**Delivery of documents to secretary of state, format, duties.**

[347.051](#). 1. The original copy of the articles of organization, an amendment or restatement of such articles, articles of termination, statement of change of registered agent or registered office, or any other statement, document or notice required or permitted to be filed pursuant to sections [347.010](#) to [347.187](#), or of any judicial decree requiring the filing of such document under sections [347.010](#) to [347.187](#), in a format as prescribed by the secretary of state, shall be delivered to the secretary of state. A person who executes articles or other documents to be filed under sections [347.010](#) to [347.187](#) as an agent or fiduciary need not evidence his authority as a prerequisite to filing. If the secretary determines that the documents substantially conform to the filing provisions of sections [347.010](#) to [347.187](#), it shall, when all required filing fees have been paid:

(1) Endorse on the accepted signed original the word "Filed", and the date of its acceptance for filing;

(2) The accepted original filing and certificate shall be retained by the secretary of state as a state record and a copy of both shall be returned to the person who submitted said document or the person's representative.

2. Upon the return by the secretary of any articles, notices, documents or judicial decree of amendment marked "Filed", the person or persons executing such documents shall promptly deliver or mail a copy thereof to each member unless the operating agreement provides otherwise.

(L. 1993 S.B. 66 & 20 § 359.728, A.L. 2004 H.B. 1664)

**False statements in documents, action for damages--failure to timelyfile, civil penalty, waiver-effect.**

[347.053](#). 1. If articles of organization, articles of amendment, a notice of winding up, or a notice of merger or consolidation filed pursuant to sections [347.010](#) to [347.187](#) contains a false statement,

one who suffers loss by good faith reliance on such statement may recover damages for the loss from the limited liability company and from the person or persons who executed such document, or caused another to execute it on his behalf, knowing the statement to be false at the time such document was executed.

2. If the person or persons required under section [347.047](#) to execute the articles of amendment fail to file the articles of amendment within the time period prescribed in subsection 2 of section [347.041](#), the limited liability company and such person or persons shall be assessed by the secretary a civil penalty in the aggregate amount of ten dollars a day for each day the amendment has not been delivered to the secretary, but not to exceed one thousand dollars; except that the secretary may waive the penalty upon showing of reasonable cause for the failure to amend in a timely manner, and in no event shall a penalty be imposed under this section if a proceeding under section [347.049](#) has been commenced within such time period. Failure to file articles of amendment, a notice of winding up or articles of termination shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.730)

Effective 12-1-93

**Statement of correction, filed when--contents--execution, effective, when--fee--statement signed.**

[347.055](#). 1. A domestic or foreign limited liability company may file a statement of correction in a format prescribed by the secretary of state, if the filed document contains an incorrect statement as of the date such document was filed.

2. The statement of correction shall:

(1) State the name of the limited liability company;

(2) State the type of document being corrected;

(3) State the name of the jurisdiction under the law of organization;

(4) Describe the incorrect statement and the reason for the correction;

(5) If the correction is for a foreign liability company with regard to an incorrect name, provide a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

4. The secretary of state shall collect a filing fee of five dollars upon filing the statement of correction.

5. The statement of correction shall be signed by an authorized person of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.732, A.L. 2004 H.B. 1664)

#### **Limitation of liability of member or manager.**

347.057. A person who is a member, manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.734)

Effective 12-1-93

#### **Actions without authority, liability.**

347.059. All persons who assume to act as a limited liability company without authority to do so and without a good faith belief that they have such authority shall be jointly and severally liable for all debts and liabilities incurred by such persons so acting.

(L. 1993 S.B. 66 & 20 § 359.735)

Effective 12-1-93

#### **Property of company--title.**

347.061. 1. Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

2. Property may be acquired, held and conveyed in the name of a limited liability company. Any estate in real property may be acquired in the name of the limited liability company and title to any estate so acquired shall vest in the limited liability company itself rather than in the members individually.

3. Subject to subsection 4 of this section:

(1) Property is presumed to be owned by the limited liability company if it is acquired in the name of the limited liability company;

(2) Property is presumed to be owned by the limited liability company if it is purchased with funds of the limited liability company even if it is acquired in the name of a member or other person; and

(3) Property is presumed to be separate property of one or more members or other persons if it is acquired in the name or names of such person or persons without use of funds of the limited

liability company even though the property was used for purposes of the business of the limited liability company.

4. Real property and other property held of public record otherwise than in the name of the limited liability company, the ownership of which is customarily publicly recorded, shall not be deemed to be owned by the limited liability company to the prejudice of a person who is not a member and who did not have actual knowledge to the contrary.

(L. 1993 S.B. 66 & 20 § 359.736)

Effective 12-1-93

#### **Transfer of property--instrument of transfer--claims, effect.**

347.063. 1. Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any authorized person in the name of the limited liability company.

2. Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

3. Property transferred under subsections 1 and 2 of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under section 347.065, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

4. Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

(L. 1993 S.B. 66 & 20 § 359.737)

Effective 12-1-93

#### **Members deemed to be agents, acts bind company--one or more managers, effect--act in contravention of restriction on authority.**

347.065. 1. Except as provided in subsection 2 of this section, every member is an agent of the limited liability company for the purpose of its business and affairs, and the act of any member, including, but not limited to, the execution of any instrument, for apparently carrying on in the usual

way of the business or affairs of the limited liability company of which he is a member binds the limited liability company, unless the member so acting has in fact no authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that the member has no such authority.

2. If the articles of organization provide that management of the limited liability company is vested in one or more managers:

(1) No member, acting solely in his capacity as a member, is an agent of the limited liability company; and

(2) Every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act of any manager for apparently carrying on in the usual way of the business or affairs of the limited liability company of which he is a manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

3. An act of a member or manager which is not apparently for the carrying on the usual way of the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with the terms of the operating agreement, at the time of the transaction or at any other time.

4. No act of a member, manager or other agent of a limited liability company in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

(L. 1993 S.B. 66 & 20 § 359.738)

Effective 12-1-93

#### **Binding act after dissolution, manner--unauthorized acts.**

[347.067](#). 1. After dissolution, an authorized person can bind the limited liability company, except as provided in subsection 2 of this section, as follows:

(1) By any act appropriate for winding up the affairs of the limited liability company or completing transactions unfinished at dissolution; and

(2) By any transaction which, although not authorized, would bind the limited liability company if dissolution had not taken place, if the other party to the transaction:

(a) Had extended credit to the limited liability company within two years prior to the event causing the dissolution and had no knowledge or notice of the dissolution; or

(b) Though such party had not so extended credit, had nevertheless known of the limited liability company prior to dissolution, had no knowledge or notice of dissolution, the fact of dissolution had not been disclosed by a notice of winding up filed pursuant to section [347.137](#) or a notice of merger or consolidation filed pursuant to section [347.129](#).

2. The limited liability company is not bound by any unauthorized act of an authorized person after dissolution:

(1) Where the limited liability company is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up limited liability company affairs;

(2) Where such authorized person is the subject of a bankruptcy and there is at least one remaining authorized person who is not the subject of a bankruptcy; or

(3) Where the person so dealing with such authorized person has knowledge that such act is not authorized.

(L. 1993 S.B. 66 & 20 § 359.739)

Effective 12-1-93

**Proper party to proceedings by or against company--joinder of proper parties--  
commencement of proceedings, where proper.**

[347.069](#). 1. A member, manager, employee, or agent of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce such person's right against or duty or liability to the limited liability company. Notwithstanding any provision of sections [347.010](#) to [347.187](#) to the contrary, any person, including a member, manager, employee or agent of a limited liability company, against whom a claim exists may be joined as a proper party to proceedings by or against a limited liability company to the extent the claim arises out of the transaction or occurrence that is the subject matter of the claim against the limited liability company.

2. Proceedings against a limited liability company shall be commenced either in the county where the cause of action accrued or in any county where such limited liability company shall have or usually keep an office or agent for the transaction of its usual and customary business, or in the county in which the office of the registered agent of the limited liability company is maintained.

(L. 1993 S.B. 66 & 20 § 359.740, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Admission or representation evidence, when.**

[347.071](#). An admission or representation made by any authorized person concerning limited liability company business or affairs within the scope of his authority as conferred by sections [347.010](#) to [347.187](#) is evidence against the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.741)

Effective 12-1-93

**Notice to authorized person of business matter, effect.**

[347.073](#). Notice to any authorized person of any matter relating to the business or affairs of the limited liability company, and the knowledge of the authorized person acting in the particular matter, acquired while an authorized person or then present to his mind, and the knowledge of any other authorized person who reasonably could and should have communicated it to the acting authorized person, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that authorized person.

(L. 1993 S.B. 66 & 20 § 359.742)

Effective 12-1-93

#### **Company liable, when.**

[347.075](#). Where, by any wrongful act or omission or other actionable conduct of any authorized person, acting in the ordinary course of the business of the limited liability company, or otherwise with authority, loss or injury is caused to any person, not being a member in the limited liability company, the limited liability company is liable for all damages permitted by law as a consequence of such actionable conduct.

(L. 1993 S.B. 66 & 20 § 359.743)

Effective 12-1-93

#### **Misapplication of money, liability.**

[347.077](#). 1. If an authorized person, acting within the scope of his apparent authority, receives money or property of a person who is not a member or manager of the limited liability company and misapplies it, the limited liability company is liable for all damages permitted by law as a consequence of such actionable conduct.

2. If the limited liability company, in the course of its business, receives money or property of a third person and the money or property so received is misapplied by any member or manager while it is in the custody of the limited liability company, the limited liability company is liable for all damages permitted by law as a consequence of such actionable conduct.

(L. 1993 S.B. 66 & 20 § 359.744)

Effective 12-1-93

#### **Management of company--managers, appointment--consent of members required for certain acts.**

[347.079](#). 1. The articles of organization shall provide how management of the limited liability company will be vested and who shall have the right and authority to manage the affairs of the limited liability company and make all decisions with respect thereto, subject to any provisions in the operating agreement or sections [347.010](#) to [347.187](#) restricting or enlarging the management rights or responsibilities of one or more persons or classes of persons.

2. If the articles of organization provide that management of the limited liability company shall be vested in one or more managers, then management of the limited liability company shall be vested in such manager or managers who shall have the right and authority to manage the affairs of the limited liability company and make decisions with respect thereto to the extent provided in the operating agreement, including any provisions therein restricting or enlarging the management rights or responsibilities of one or more persons or classes of persons. The managers of a limited liability company shall be designated in the operating agreement, or designated, appointed or elected by the members in the manner prescribed by the operating agreement, and may be removed or replaced in the manner provided in the operating agreement. Managers need not be members of the limited liability company or individuals unless otherwise required by the operating agreement. If the operating agreement does not provide a manner for designating, appointing, electing, removing or replacing managers, then, the managers of a limited liability company shall be designated, appointed, elected, removed or replaced by the vote of a majority by number of the members and unless earlier removed or resigned, managers shall hold office until their successors have been designated, appointed or elected and qualified.

3. Except as provided in the operating agreement, the affirmative vote, approval or consent of all members shall be required to:

(1) Amend a written operating agreement;

(2) Issue an interest in the limited liability company to any person and admit such person as a member;

(3) Approve a merger or consolidation with another person;

(4) Change the status of the limited liability company from one in which management is vested in the members to one in which management is vested in one or more managers, or vice versa;

(5) Authorize any transaction, agreement or action on behalf of the limited liability company that is unrelated to its purpose as set forth in the articles of organization, that otherwise contravenes the operating agreement or that is not within the usual course of the business of the limited liability company; or

(6) Determine, modify, compromise or release the amount and character of the contributions which a member shall make, or shall promise to make, as the consideration for the issuance of an interest in the limited liability company.

4. Except as provided in the operating agreement, and subject to subsection 3 of this section, the affirmative vote, approval or consent of more than one-half by number of the authorized persons shall be required to decide any matter connected with the business or affairs of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.745, A.L. 2004 H.B. 1664)

**Operating agreement, contents--policy statement--enforceability,remedies.**

347.081. 1. The member or members of a limited liability company shall adopt an operating agreement containing such provisions as such member or members may deem appropriate, subject only to the provisions of sections 347.010 to 347.187 and other law. The operating agreement may contain any provision, not inconsistent with law, relating to the conduct of the business and affairs of the limited liability company, its rights and powers, and the rights, powers and duties of its members, managers, agents or employees, including:

(1) Whether the management of the limited liability company shall be vested in one or more members, managers or other persons, and, if so, the powers and authority to be exercised by such persons;

(2) Providing for classes or groups of members having various rights, powers and duties, and providing for the future creation of additional classes or groups of members having relative rights, powers and duties superior or equal to existing classes and groups of members;

(3) The exercise or division of management or voting rights among different classes or groups of members, managers or other persons on a per capita or other basis;

(4) With respect to any matter requiring a vote, approval or consent of members or managers, provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of notice, action by consent without a meeting, quorum requirements, authorizations by proxy, or any other matter with respect to the exercise of any voting or approval rights;

(5) Authorizing all or certain persons to execute articles, notices or documents permitted or required by sections 347.010 to 347.187;

(6) Restrictions on the transfer of members' interests in the limited liability company, and options or rights to acquire or sell members' interests in the limited liability company;

(7) The manner in which income, gain, deduction, loss, credit and items thereof are to be allocated to the members; and

(8) Provisions relating to any tax elections to be made by the limited liability company and the authorization of persons to make such elections.

2. It is the policy of sections 347.010 to 347.187 to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

3. The operating agreement shall be enforceable at law or in equity by any member to the extent provided in applicable law.

4. This section shall not affect any otherwise valid agreement among members of a limited liability company.

(L. 1993 S.B. 66 & 20 § 359.746, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2004 H.B. 1664)

**Action or vote without meeting, consent required.**

[347.083](#). Unless otherwise provided in the operating agreement, any action or vote which must be taken at a meeting of the members or managers, as the case may be, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the persons entitled to act or vote with respect to such matter. Such consent shall have the same effect as an act or vote of such persons.

(L. 1993 S.B. 66 & 20 § 359.747)

Effective 12-1-93

**Waiver of required notice, effect--attendance at meeting--effect.**

[347.085](#). 1. When, under the provisions of sections [347.010](#) to [347.187](#) or under the provisions of the operating agreement of a limited liability company, notice is required to be given to any person, a waiver in writing signed by that person, whether before or after the time stated in it, is equivalent to the giving of notice.

2. A person's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless such person at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless such person objects to considering the matter when it is presented.

(L. 1993 S.B. 66 & 20 § 359.748)

Effective 12-1-93

**Standard of duty--extent of liabilities and duties--profit or benefit,duty.**

[347.088](#). 1. Except as otherwise provided in the operating agreement an authorized person shall discharge his or her duty under sections [347.010](#) to [347.187](#) and the operating agreement in good faith, with the care a corporate officer of like position would exercise under similar circumstances, in the manner a reasonable person would believe to be in the best interest of the limited liability company, and shall not be liable for any such action so taken or any failure to take such action, if he or she performs such duties in compliance with this subsection.

2. To the extent that, at law or equity, a member or manager or other person has duties, including fiduciary duties, and liabilities relating to those duties to the limited liability company or to another member, manager, or other person that is party to or otherwise bound by an operating agreement:

(1) Any such member, manager, or other person acting under the operating agreement shall not be liable to the limited liability company or to any such other member, manager, or other person

for the member's, manager's, or other person's good faith reliance on the provisions of the operating agreement; and

(2) The member's, manager's or other person's duties and liabilities may be expanded or restricted by provision in the operating agreement.

3. Except as otherwise provided in the operating agreement, every member or manager, if any, shall account to the limited liability company and hold as trustee for it any profit or benefit derived by such person without the informed consent of more than one-half by number of disinterested managers or members from any transaction connected with the conduct of the business and affairs or the winding up of the limited liability company, or from any personal use by such person of the property of the limited liability company, including confidential or proprietary information of the limited liability company or other matters entrusted to him as a result of his status as manager or member.

4. Except as provided in subsection 2 of this section or the operating agreement, one who is a member of a limited liability company in which management is vested in one or more managers and who is not a manager shall have no duties to the limited liability company or to the other members solely by reason of acting in his capacity as a member.

(L. 1993 S.B. 66 & 20 § 359.749, A.L. 2004 H.B. 1664)

#### **Reliance by authorized person upon information--discharge of duties.**

347.090. 1. Unless he has knowledge concerning the matter in question that makes such reliance unwarranted, in discharging his duties under the operating agreement, an authorized person is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

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

(2) Legal counsel, accountants, or other persons as to matters such authorized person reasonably believes are within such person's professional or expert competence; or

(3) A committee of managers or members of which he is not a constituent, if such authorized person reasonably believes that the committee merits confidence.

2. An authorized person is not liable for any action taken with respect to his duties under the operating agreement, or any failure to take such action, if he performs such duties in compliance with this section.

(L. 1993 S.B. 66 & 20 § 359.750)

Effective 12-1-93

#### **Items required to be kept at principal place of business--rights of members--failure to deliver items to secretary, penalty.**

347.091. 1. The limited liability company shall keep at its principal place of business, the following:

(1) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any, set forth in alphabetical order;

(2) A copy of the articles of organization and all articles of amendment thereto, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(3) Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three most recent years or, if such returns and reports were not prepared for any reason, copies of the information and records provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local tax returns for such period;

(4) Copies of any effective written operating agreements, and all amendments thereto, and copies of any written operating agreements no longer in effect;

(5) Copies of any financial statements of the limited liability company for the three most recent years;

(6) Unless contained in a written operating agreement, a writing setting out:

(a) The amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made;

(b) Information that would enable a member to determine the relative voting rights of the members on a particular matter if such voting rights are other than on a per capita basis; and

(c) Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up;

(7) Copies of any written promise by a member to make a contribution to the limited liability company;

(8) Copies of any written consents by the members to the admission of any person as a member of the limited liability company;

(9) Copies of any written consents by the members to continue the limited liability company upon an event of withdrawal of any member;

(10) Copies of any other instruments or documents reflecting matters required to be in writing pursuant to the operating agreement.

2. Each member may:

(1) Inspect and copy during ordinary business hours, at the reasonable request and at the expense of such member, any of the limited liability company records required to be kept by subsection 1 of this section;

(2) From time to time upon reasonable demand, obtain true and full information regarding the state of the business and financial condition of the limited liability company;

(3) Have an accounting of the affairs of the limited liability company whenever circumstances render it just and reasonable.

3. The secretary may request in writing that the limited liability company forward to him a complete copy of the current, past, or both, limited liability company lists kept pursuant to subdivision (1) of subsection 1 of this section without cost to the secretary. Any authorized person who has possession or control of such list and who fails to deliver the list to the secretary within twenty days after receiving written demand therefor may be individually subject to a civil penalty in the amount of fifty dollars per day for each day the list has not been delivered to the secretary, but not to exceed ten thousand dollars, such penalty to be assessed and collected by the secretary, and prosecuted criminally with any resulting conviction being a class A misdemeanor.

4. Failure of the limited liability company to keep any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.751)

Effective 12-1-93

#### **Member or manager may lend money and transact business.**

[347.093](#). Except as provided in the operating agreement, a member or manager may lend money to and transact business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

(L. 1993 S.B. 66 & 20 § 359.752)

Effective 12-1-93

#### **Claims among managers or members.**

[347.095](#). Nothing contained in sections [347.079](#) to [347.090](#) shall have any application to claims among members, managers, or the limited liability company on the one hand, and persons who assert claims against a member, manager or a limited liability company which do not arise from the claimant's status as a member or manager of that limited liability company.

(L. 1993 S.B. 66 & 20 § 359.753)

Effective 12-1-93

#### **Interest may issue upon consideration.**

[347.097](#). An interest in a limited liability company may be issued for the consideration of a contribution or an enforceable promise to make a contribution in the future, or both.

(L. 1993 S.B. 66 & 20 § 359.754)

Effective 12-1-93

**Promises for contribution to be in writing--performance of promise,remedy--cause of action.**

[347.099](#). 1. No promise by a member to make a contribution to the limited liability company is enforceable unless set out in a writing signed by the member.

2. Except as provided in the operating agreement, a member or, in the case of a deceased member, that member's personal representative, is obligated to the limited liability company to perform any promise to make a contribution, including a promise to render services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution, the member is obligated, at the option of the limited liability company, to contribute cash equal to the value, as stated in the operating agreement or the records required to be kept pursuant to section [347.091](#), of that portion of the promised contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company or other members may have against such member under the operating agreement or applicable law.

3. A member's obligation to make a contribution shall not be enforceable by a third-party creditor of the limited liability company or any other member unless the member so obligated to make such contribution has specifically agreed or consented to such enforcement or the limited liability company has assigned such member's obligation to the creditor or creditors seeking to enforce the obligation.

4. Upon the failure of a member to make a promised contribution when due, the limited liability company may enforce such member's obligation by appropriate legal action for damages for breach of contract or for specific performance, and the limited liability company and other members may exercise and enforce such additional rights and remedies as may be provided under the operating agreement in the event of any such failure, subject to the applicable law regarding the enforcement of contracts.

(L. 1993 S.B. 66 & 20 § 359.755)

Effective 12-1-93

**Distributions required, when--manner.**

[347.101](#). 1. Except as provided in section [347.109](#), a limited liability company shall make distributions of cash or other property to its members before the dissolution and winding up of the limited liability company at the times or upon the happening of the events specified in the operating agreement or, if the operating agreement does not so specify, then at such times as may be approved by a majority of the authorized persons.

2. Distributions of cash or other property to members by a limited liability company before the dissolution and winding up of a limited liability company shall be shared among the members, and among classes of members, in the manner and in the relative priorities provided in the operating

agreement. If the operating agreement does not so provide, distributions shall be shared among the members in the following manner:

(1) First, distributions shall be shared among the members in proportion to the amount of cash contributions and the value of other contributions, as stated in the operating agreement or the records required to be kept pursuant to section [347.091](#), made by them, respectively, until each member has been returned his contributions; and

(2) Second, distributions shall be shared by the members equally.

(L. 1993 S.B. 66 & 20 § 359.756)

Effective 12-1-93

### **Dissolution as result of withdrawal of member, distribution--withdrawal in violation of agreement.**

[347.103](#). 1. If a limited liability company dissolves and winds up its business and affairs as a result of an event of withdrawal of a member, then, except as otherwise provided in the operating agreement, such member and his personal representatives, successors and assigns shall have the rights of an assignee of the withdrawn member's interest in the limited liability company to receive distributions with respect to such interest during and upon completion of winding up, but the limited liability company may, in addition to any remedies otherwise available under applicable law, reduce the amounts distributable with respect to such interest by any damages recoverable against the withdrawn member if such event of withdrawal violated the operating agreement.

2. If the business of a limited liability company is continued following an event of withdrawal of a member, then, except as otherwise provided in the operating agreement, such member shall have the rights of an assignee of the withdrawn member's interest in the limited liability company. The withdrawn member shall be entitled to receive any distributions to which he is entitled upon such event of withdrawal under the provisions of the operating agreement. If the operating agreement does not provide for the amount of or a method for determining the distribution, if any, to which a withdrawn member is entitled, the withdrawn member shall be entitled, except in the case of an event of withdrawal pursuant to subsection 2 of section [347.123](#), to receive from the\*\* limited liability company, upon demand for such distribution made by or on behalf of such withdrawn member within one hundred eighty days after such event of withdrawal and subject to the limitation set forth in section [347.109](#), the fair value of such withdrawn member's interest in the limited liability company as of the date of withdrawal based upon such withdrawn member's right to share in distributions from the limited liability company as an ongoing operation. If such demand is not made on a timely basis, the limited liability company may, except as provided in the operating agreement, purchase the withdrawn member's interest in the limited liability company, for the fair value of such withdrawn member's interest in the limited liability company determined as of the date of withdrawal based upon such withdrawn member's right to share in distributions from the limited liability company as an ongoing operation, at any time, upon thirty days' written notice from the limited liability company to the withdrawn member, such withdrawn member's personal representatives, successors or assigns. In any event, if such event of withdrawal violated the operating agreement:

(1) The goodwill of the limited liability company's business shall be excluded in determining the fair value of the withdrawn member's interest;

(2) In addition to any remedies otherwise available under applicable law, the amount payable to the withdrawn member shall be reduced by any damages suffered by the limited liability company or its members as a result of the withdrawn member's breach of the operating agreement; and

(3) The limited liability company may defer payment of the amount the withdrawn member is entitled to receive for such period, and shall secure the same by such collateral, as may be approved by a court, in order to prevent unreasonable hardship to the limited liability company.

3. The provisions of this section apply to all limited liability companies in existence on the effective date of this section\*, unless such limited liability company elects otherwise by the written agreement of all its members.

(L. 1993 S.B. 66 & 20 § 359.758, A.L. 1997 H.B. 655 merged with S.B. 170)

\*Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

\*\*Word "the" does not appear in original rolls.

#### **Distribution, form of.**

[347.105](#). Except as otherwise provided in the operating agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the operating agreement, a member may not be compelled to accept a distribution of any property other than cash from the limited liability company unless the members receive undivided ownership interests therein that are in the same proportions as they would have shared in a cash distribution equal to the value of such property at the time of distribution.

(L. 1993 S.B. 66 & 20 § 359.762)

Effective 12-1-93

#### **Remedies of member entitled to distribution.**

[347.107](#). At the time a member becomes entitled to receive a distribution in accordance with sections [347.010](#) to [347.187](#) and the operating agreement, that member has the status of, and is entitled to, all remedies available to a creditor of the limited liability company with respect to the distribution.

(L. 1993 S.B. 66 & 20 § 359.764)

Effective 12-1-93

#### **Limitations upon distributions--date of measurement of effectivedistributions--wrongful distribution, liability, contribution.**

**347.109.** 1. A limited liability company shall not make any distribution to one or more members with respect to their interests in the limited liability company, and no member shall be entitled to receive any such distribution, to the extent that, after giving effect to the distribution:

(1) The limited liability company would not be able to pay its debts as they became due in the usual course of business; or

(2) The limited liability company's total assets would be less than the sum of its total liabilities to which such assets are subject plus, unless the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose rights to receive distributions are superior under the operating agreement to the rights of the members receiving the distribution, except that, for purposes of making such determination, liabilities to members or former members in their status as such shall be excluded.

2. The limited liability company may base a determination that its distribution is not prohibited under subsection 1 of this section on:

(1) Financial statements prepared on the basis of generally accepted accounting principles and practices that are reasonable under the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

3. The effective distribution under subsection 1 of this section is measured as of:

(1) The date the distribution is authorized, if the distribution in fact occurs within one hundred twenty days after the date of authorization; or

(2) The date the payment is made, if it occurs more than one hundred twenty days after the date of authorization.

4. If a member shall receive any distribution with respect to his interest in a limited liability company in violation of this section or the operating agreement, such member and the person or persons who are vested with authority under the operating agreement to make distributions to the members and who knowingly authorized or permitted such distribution to the member shall be liable, for a period of three years following the date of the distribution, to the limited liability company for the value of the wrongful distribution, but only to the extent necessary to discharge the limited liability company's liabilities incurred prior to the date of such distribution. If more than one such person who authorized or permitted such wrongful distribution is held liable therefor pursuant to this subsection, each such person shall be entitled to contribution from the other persons who are held so liable therefor pursuant to this subsection.

(L. 1993 S.B. 66 & 20 § 359.765, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Allocation of profits or losses, manner.**

[347.111](#). The profits or losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not so provide, profits shall be allocated among the members in the amount and manner of any losses previously allocated to the members to the extent not previously offset by allocations of profit and then according to the manner in which they share in distributions which exceed the repayment of their contributions, and losses shall be allocated among the members according to the respective contributions which they have made and promised to make in the future.

(L. 1993 S.B. 66 & 20 § 359.766)

Effective 12-1-93

### **Members--additional members.**

[347.113](#). 1. A person is a member at the time the limited liability company is formed if such person is identified as a member in and signs, in person or by an attorney in fact, or otherwise becomes a party to the operating agreement.

2. A person may be admitted as an additional member by signing, in person or by an attorney in fact, or otherwise becoming a party to the operating agreement and by complying with the applicable terms and conditions of the operating agreement or, if the operating agreement does not so provide, upon the written consent of all members; or in the case of an assignee of the interest of a member who has the power, as provided in the operating agreement, to grant the assignee the right to become a member, upon the exercise of that power in compliance with any conditions limiting the exercise thereof.

(L. 1993 S.B. 66 & 20 § 359.768)

Effective 12-1-93

### **Interest in company is personal property, assignability, distributions, pledge of security interest, effect--rights of assignee--liability of assignor.**

[347.115](#). 1. The interest of a member in a limited liability company is personal property and, except as provided in the operating agreement, may be assigned in whole or in part. An assignment of an interest does not entitle the assignee to participate in the management of the business and affairs of the limited liability company or to become or to exercise the rights of a member, except as provided in section [347.113](#). An assignee that has not become a member shall only be entitled to receive, to the extent assigned, the share of distributions and profits, including distributions representing the return of contributions, to which the assignor would otherwise be entitled with respect to the assigned interest. Unless otherwise provided in the operating agreement, a member shall not cease to be a member as a result of the pledge, encumbering or the granting of a security interest in the interest of such member in the limited liability company.

2. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, the

operating agreement and sections [347.010](#) to [347.187](#). An assignee who becomes a member is liable for any obligations of his assignor to make contributions.

3. Unless otherwise provided in the operating agreement, if an assignee of an interest in a limited liability company becomes a member, the assignor is not released from his liability to the limited liability company under section [347.099](#) or section [347.109](#) without the written consent of all members.

(L. 1993 S.B. 66 & 20 § 359.770)

Effective 12-1-93

### **Effect of death or incompetence of member, assignability of interest--business organization as member, dissolution, assignability of interest.**

[347.117](#). 1. Unless otherwise provided in the operating agreement, if a member who is an individual dies or a court of competent jurisdiction judges the member to be incompetent to manage his or her person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have any power the member had to give his assignee the right to become a member and all of the rights of an assignee of the member's interest.

2. If a member is a corporation, partnership, limited liability company, trust or other entity and is dissolved or terminated, its legal representative or successor shall have any power the member had to give his assignee the right to become a member and all of the rights of an assignee of the member's interest.

(L. 1993 S.B. 66 & 20 § 359.772)

Effective 12-1-93

### **Judgment creditor of member, charge of member's interest with payment of unsatisfied judgment.**

[347.119](#). On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest. Sections [347.010](#) to [347.187](#) do not deprive any member of the benefit of any exemption laws applicable to his interest in the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.774)

Effective 12-1-93

### **Withdrawal of member, how effected--withdrawal in violation of operating agreement--consequences of withdrawal.**

[347.121](#). 1. A member may withdraw from a limited liability company at the time or upon the events specified in writing in the operating agreement, or at any time upon giving ninety days' prior

written notice of withdrawal to the other members but, if the withdrawal violates a written provision in the operating agreement, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the withdrawing member in accordance with section [347.103](#).

2. Except as otherwise provided in the operating agreement, upon the occurrence of an event of withdrawal of a member, the withdrawn member shall have no further duty to the limited liability company except for the duty to account to the limited liability company for any profit or benefit derived by such person without the informed consent of more than one-half by number of disinterested managers or members from any transaction connected with the conduct of the business and affairs of the limited liability company prior to the event of withdrawal, or from any personal use by such person of the property of the limited liability company, including confidential or proprietary information of the limited liability company or other matters entrusted to such person as a result of such member's status as a manager or member.

3. Except as otherwise provided in the operating agreement, upon the withdrawal of a member, the withdrawn member shall have no further right to participate in the management and affairs of the limited liability company and shall have only the rights of an assignee of the withdrawn member's interest in the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.775, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

#### **Cessation of membership, events of withdrawal.**

[347.123](#). A person ceases to be a member of a limited liability company upon the happening of any of the following events of withdrawal:

- (1) The member withdraws from the limited liability company as provided in section [347.121](#);
- (2) Unless otherwise provided in the operating agreement or by the specific written consent of all members at the time, the member assigns all of his interest in the limited liability company;
- (3) The member is expelled as a member in accordance with the operating agreement;
- (4) Unless otherwise provided in the operating agreement or by the specific written consent of all members at the time, the member:
  - (a) Makes an assignment for the benefit of creditors;
  - (b) Is the subject of a bankruptcy;
  - (c) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any statute, law or regulation or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in a proceeding of such nature; or

(d) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his property;

(5) Unless otherwise provided in the operating agreement or by the specific written consent of all members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his property, the appointment is not vacated or stayed, or within ninety days after the expiration of any such stay, the appointment is not vacated;

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

(a) His death; or

(b) The entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) In the case of a member that is a trust, the termination of the trust or a distribution of its entire interest in the limited liability company but not merely the substitution of a new trustee;

(8) In the case of a member that is a general or limited partnership, the dissolution and commencement of winding up of the partnership or a distribution of its entire interest in the limited liability company;

(9) In the case of a member that is a corporation, the filing of articles of dissolution, or their equivalent, for the corporation or revocation of its charter or a distribution of its entire interest in the limited liability company;

(10) In the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(11) In the case of a member that is a limited liability company, the filing of articles of dissolution or termination, or their equivalent, for the limited liability company or a distribution of its entire interest in the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.776)

Effective 12-1-93

**Partnership, limited partnership, or registered limited liability partnerships may convert to limited liability company--articles of organization, contents--title to property, effect--creditors rights, effect.**

[347.125](#). 1. A general or limited partnership formed under the laws of this state may convert to a limited liability company by filing articles of organization that meet the requirements of section [347.039](#) and include the following:

(1) The name of the former general partnership or limited partnership;

(2) In the case of a limited partnership, the date and place of filing of the initial certificate of limited partnership of the former limited partnership and any application for registration as a limited liability limited partnership; and

(3) In the case of a general partnership, the date of filing of any fictitious name registration of the former general partnership or any application for registration as a limited liability partnership.

2. Nothing in this section shall be construed to require, or deemed to constitute, a dissolution of the general partnership or limited partnership prior to its conversion to a limited liability company as permitted in this section.

3. When a general partnership or limited partnership is converted to a limited liability company pursuant to this section, the title to any real or personal property or any interest therein and all rights, privileges, powers, debts, causes of action vested in the former partnership shall be deemed to be transferred to and vested in such limited liability company without further act or deed. Confirmatory deeds, assignments or similar instruments to evidence the transfer may be executed and delivered at any time in the name of the partnership to the limited liability company.

4. When a general partnership or limited partnership is converted to a limited liability company pursuant to this section, all duties, debts, liens, liabilities and rights of creditors as against the former partnership and its partners shall continue without impairment and shall attach to the limited liability company. Any existing claim, action or proceeding pending by or against the partnership or its partners may be prosecuted to judgment as if the conversion had not taken place, or against the limited liability company to the same extent as if such duties, debts, liens and liabilities had been incurred or contracted by it. A judgment against the partnership constitutes a lien against the limited liability company and may be enforced against the limited liability company.

5. In the case of a conversion of a general or limited partnership to a limited liability company pursuant to this section, the fictitious name registration, certificate of limited partnership of the general or limited partnership and any application for registration as a limited liability partnership or limited liability limited partnership shall be deemed cancelled by the filing of the articles of organization by the secretary of state pursuant to this section.

(L. 1993 S.B. 66 & 20 § 359.777, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Merger or consolidation of limited liability companies--merger or consolidation of partnerships, companies, trusts, corporations, and other associations.**

347.127. 1. A domestic limited liability company may merge or consolidate with or into one or more limited liability companies formed under the laws of this state or any other jurisdiction, and such domestic limited liability company or foreign limited liability company by agreement between the

parties to the merger or consolidation, shall provide for the surviving entity, as provided in sections [347.127](#) to [347.135](#).

2. A domestic limited liability company may merge or consolidate with one or more general partnerships or domestic or foreign limited partnerships, limited liability companies, trusts, business trusts, corporations, real estate investment trusts and other associations or business entities at least one of which is not a limited liability, as provided in sections [347.700](#) to [347.735](#).

(L. 1993 S.B. 66 & 20 § 359.778)

Effective 12-1-93

#### **Agreement of merger or consolidation.**

[347.128](#). Each limited liability company party to a merger or consolidation as described in subsection 1 of section [347.121](#) shall enter into a written agreement of merger or consolidation. The agreement of merger or consolidation shall set forth:

(1) The name and state or country of organization of each of the limited liability companies party to the merger or consolidation and the name of the surviving limited liability company into which each other limited liability company proposes to merge or the new limited liability company into which each of the limited liability companies propose to consolidate;

(2) The terms and conditions of the merger or consolidation;

(3) The manner and basis of converting the interests in each limited liability company party to the merger or consolidation into interests of the surviving or new limited liability company or of any other person, or, in whole or in part, into cash or other property;

(4) In the case of a merger, such amendments to the organizational documents of the surviving limited liability company, as are desired to be effected by the merger, or a statement that no such amendments are desired;

(5) In the case of a consolidation, all statements required to be set forth in the articles of organization of the new limited liability company; and

(6) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable by the parties to the merger or consolidation.

(L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Notice of merger or consolidation, filing, contents--execution--notice of abandonment, contents--effective date of merger or consolidation of foreign companies.**

347.129. 1. The surviving limited liability company in the merger or the new limited liability company in the consolidation shall file a notice of the merger or consolidation with the secretary which shall set forth:

(1) The name of each party to the merger or consolidation;

(2) The effective date of the merger or consolidation which may not exceed ninety days after the filing of the notice of merger or consolidation;

(3) The name of the surviving limited liability company in the merger or the new limited liability company in the consolidation and the state of its formation;

(4) A statement that the merger or consolidation was authorized and approved by the members of each party to the merger or consolidation in accordance with the laws of the jurisdiction where it was organized;

(5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new limited liability company;

(6) In the case of a merger in which a domestic limited liability company is the surviving limited liability company, such amendments to the articles of organization of the surviving limited liability company as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of organization of the surviving limited liability company shall not be amended as a result of the merger;

(7) In the case of a consolidation in which a domestic limited liability company is the continuing limited liability company, the articles of organization of the new domestic limited liability company shall be set forth in an attachment to the notice of consolidation;

(8) A statement that the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new limited liability company, stating the address of the principal place of business; and

(9) A statement that a copy of the agreement of merger or consolidation will be furnished by the surviving or new entity, on request and without cost, to any member of any entity that is a party to the merger or consolidation.

2. The notice of the merger or consolidation shall be executed by at least one authorized person of the domestic limited liability company and one authorized agent, or its equivalent, for the other party to the merger or consolidation who is duly authorized to execute such notice.

3. In the event the merger or consolidation is not consummated for any reason, the domestic limited liability company shall promptly file a notice of the abandonment of the merger or consolidation with the secretary which shall set forth:

(1) The name of each party to the merger or consolidation;

(2) The date the notice of merger or consolidation was filed with the secretary; and

(3) A statement that the merger or consolidation was not consummated and has been abandoned.

4. If the surviving or new limited liability company is a foreign limited liability company, the effective date of such merger or consolidation shall be the date on which the same becomes effective in the state of domicile of such surviving or new limited liability company; provided a document from the state of domicile of the surviving limited liability company in the case of merger or the case of consolidation certifying that the merger or consolidation has become effective in such state shall be a requirement for the merger or consolidation becoming effective in this state.

(L. 1993 S.B. 66 & 20 § 359.780, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2004 H.B. 1664)

#### **Effective date of merger or consolidation.**

[347.131](#). A merger or consolidation with a domestic survivor or new domestic limited liability company is effective as of the later of:

(1) The date the secretary files the notice of merger or consolidation for record; or

(2) The date set forth in the notice of merger or consolidation, not to exceed ninety days after the notice of merger or consolidation is accepted for filing.

(L. 1993 S.B. 66 & 20 § 359.782, A.L. 2004 H.B. 1664)

#### **Consummation of merger or consolidation, effects--required filings.**

[347.133](#). Consummation of a merger or consolidation shall have the following effects:

(1) The separate existence of each party to the merger or consolidation, except the surviving entity, ceases;

(2) The assets of each party to the merger or consolidation, including any legacies that it would have been capable of taking, transfer to, vest in and devolve on the surviving entity without further act or deed. Confirmatory deeds, assignments or similar instruments to evidence the transfer may be executed and delivered at any time in the name of the transferring party to the agreement of merger or consolidation by its last acting members or managers, authorized officers or other authorized agents or by the appropriate members, managers, authorized officers or other authorized agents of the surviving entity;

(3) The surviving entity is liable for all the debts and obligations of each nonsurviving party to the merger or consolidation. Any existing claim, action or proceeding pending by or against any nonsurviving party to the merger or consolidation may be prosecuted to judgment as if the merger or consolidation had not taken place, or, on motion of the surviving entity or any party, the surviving entity may be substituted as a party to the claim, action or proceeding. A judgment against the nonsurviving party to the merger or consolidation constitutes a lien on the surviving entity;

(4) A merger or consolidation does not impair the rights of creditors or any liens on the property of any foreign or domestic person party to the merger or consolidation;

(5) In the case of a merger, the articles of organization of any surviving domestic limited liability company shall be amended to the extent provided in the notice of merger and the articles of organization of each other domestic limited liability company shall be deemed cancelled by the filing of the notice of merger by the secretary of state;

(6) In the case of a consolidation, the statements set forth in the agreement or articles of consolidation and which are required or permitted to be set forth in the organizational documents of the new entity shall be deemed to be the original organizational documents of the new entity and the organizational documents of each other domestic constituent entity shall be deemed cancelled by the filing of the notice of consolidation by the secretary of state; and

(7) The interests in each limited liability company party to the merger or consolidation that are to be converted or exchanged into interests, cash, obligations or other property pursuant to the terms of the agreement of merger or consolidation shall be so converted or exchanged. The former holders of such interests, cash, obligations or other property shall be entitled only to the rights provided in the agreement of merger or consolidation or the rights otherwise provided by law.

(L. 1993 S.B. 66 & 20 § 359.784, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

#### **Surviving entity of merger as natural person, statement of service of process--appointment of secretary as agent.**

[347.135](#). If, following a merger or consolidation involving one or more domestic limited liability companies, the surviving entity is a person, who is not organized under the laws of this state, there shall be included in the notice of merger or consolidation filed pursuant to section [347.129](#) a statement that the surviving entity agrees that it may be served with process in the state of Missouri in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company or companies that arose before the merger or consolidation, irrevocably appointing the secretary as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of the process shall be mailed to it by the secretary.

(L. 1993 S.B. 66 & 20 § 359.785)

Effective 12-1-93

#### **Dissolution of company, events--notice of winding up.**

[347.137](#). 1. A domestic limited liability company shall be dissolved upon the occurrence of any of the following:

(1) Upon the happening of the events specified in the operating agreement or in the articles of organization;

(2) Upon the written consent of all members;

(3) Except as otherwise provided in the operating agreement, an event of withdrawal of a member, if a majority, by number, of the remaining members agree within ninety days after the occurrence of the event of withdrawal to dissolve the limited liability company;

(4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

(a) Unless otherwise provided in the operating agreement, within ninety days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative, statutory or otherwise, of the last remaining member agrees in writing to continue the limited liability company and to the admission of such personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that the operating agreement may provide that the personal representative, statutory or otherwise, of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of such personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(b) A member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, under a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;

(5) Entry of a decree of dissolution under section [347.143](#); or

(6) When the limited liability company is not the surviving entity in a merger or consolidation.

2. As soon as possible following the occurrence of any of the events specified in subdivisions (1) to (5) of subsection 1 of this section effecting the dissolution of the limited liability company, the limited liability company shall file a notice of winding up with the secretary which discloses the dissolution of the limited liability company and the commencement of winding up of its business and affairs.

(L. 1993 S.B. 66 & 20 § 359.786, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2000 S.B. 896, A.L. 2007 H.B. 431)

**Effect of dissolution--acts required, distribution of assets--members or trustees.**

[347.139](#). 1. Upon the dissolution of a limited liability company, the limited liability company shall cease to carry on its business, except insofar as may be necessary or appropriate for the winding up

of its business, but its separate existence shall continue until articles of termination have been filed with the secretary or until a decree terminating the limited liability company has been entered by a court of competent jurisdiction.

2. After its dissolution, the limited liability company shall do all other acts required to liquidate its business and affairs; proceed to collect its assets; pay, satisfy, or discharge its liabilities and obligations or make adequate provisions for the payment or discharge thereof; convey and dispose of such of its properties which are not to be distributed in kind to its members; and its assets shall be applied and distributed in the following order:

(1) If there are sufficient assets therefor, to creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under section [347.101](#) or [347.103](#). If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor;

(2) Except as provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under section [347.101](#) or [347.103](#); and

(3) Except as provided in the operating agreement, to the members in the manner provided in section [347.101](#).

3. Upon the filing of the articles of termination as provided in section [347.045](#), the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in sections [347.010](#) to [347.187](#). The authorized person or authorized persons at the time of termination, or the survivors of them or, if none, the members at the time of termination shall thereafter be trustees for the members and creditors of the terminated limited liability company and\* as such shall have authority to distribute or convey any of the limited liability company's assets or its property discovered after termination, and to take such other action as may be necessary on behalf of and in the name of such terminated limited liability company. Except as provided in section [347.141](#), actions by or against the dissolved limited liability company brought for the purpose of collecting or settling assets or liabilities or claims discovered after termination may be brought or instituted in the name of the limited liability company.

(L. 1993 S.B. 66 & 20 § 359.787)

Effective 12-1-93

\*Word "and" does not appear in original rolls.

**Disposition of claims after dissolution--notice of dissolution,requirements--barred claims--notice of winding up, disposition of unknown claims--barred claims--enforcement of claims--fraudulent intent defined.**

[347.141](#). 1. A dissolved limited liability company may dispose of the known claims against it in accordance with subsections 1 and 2 of this section. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than ninety days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

2. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, a claim against a limited liability company dissolved without fraudulent intent is barred if either of the following occurs:

(1) A claimant who was given written notice under subsection 1 of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within one hundred and twenty days from the effective date of the rejection notice.

For purposes of this subsection, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

3. A dissolved limited liability company may dispose of the unknown claims against it by filing a notice of winding up in accordance with subsections 3 and 4 of this section. The notice of winding up shall meet all of the following requirements:

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

(2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;

(3) Be published one time in the Missouri Register;

(4) Contain a request that persons with claims against the limited liability company present them in accordance with the notice of winding up;

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

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

4. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, if a limited liability company dissolved without fraudulent intent files a notice of winding up in accordance with subsection 2 of section [347.137](#) and publishes such notice in accordance with subsection 3 of this section, the claim of each of the following claimants is barred

unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the date the notice of winding up is filed or published, whichever occurs later:

(1) A claimant who did not receive written notice under subsection 1 of this section;

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

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

5. A claim may be enforced under this section in either of the following ways:

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

(2) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

6. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the dissolution was to defraud members, creditors or others.

7. Notwithstanding any other provision of this chapter to the contrary, except as provided in subsection 8 of this section, a claim against a limited liability company dissolved pursuant to this chapter for which claim the limited liability company has a contract of insurance which will indemnify the limited liability company for any adverse result from such claim:

(1) Is not subject to the provisions of subsections 1 to 6 of this section and may not be barred by compliance with subsections 1 to 6 of this section;

(2) May be asserted at any time within the statutory period otherwise provided by law for such claims;

(3) May be asserted against, and service of process had upon, the dissolved limited liability company for whom the court, at the request of the party bringing the suit, shall appoint a defendant ad litem.

8. Judgments obtained in suits filed and prosecuted pursuant to subsection 7 of this section shall only be enforceable against one or more contracts of insurance issued to the limited liability company, its officers, directors, agents, servants or employees, indemnifying them, or any of them, against such claims.

(L. 1993 S.B. 66 & 20 § 359.788, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 1999 S.B. 278, A.L. 2000 S.B. 896)

**Involuntary dissolution, decree, action by attorney general, grounds--action upon application by member.**

[347.143](#). 1. A limited liability company may be dissolved involuntarily by a decree of the circuit court for the county in which the registered office of the limited liability company is situated in an action filed by the attorney general when it is established that the limited liability company:

- (1) Has procured its articles of organization through fraud;
- (2) Has exceeded or abused the authority conferred upon it by law;
- (3) Has carried on, conducted, or transacted its business in a fraudulent or illegal manner; or
- (4) By the abuse of its powers contrary to the public policy of the state, has become liable to be dissolved.

2. On application by or for a member, the circuit court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the operating agreement.

(L. 1993 S.B. 66 & 20 § 359.789)

Effective 12-1-93

**Action for involuntary dissolution, where commenced--service of process, publication.**

[347.145](#). 1. Every action for the involuntary dissolution of a limited liability company brought by the attorney general shall be commenced either in the circuit court of the county in which the registered office of the limited liability company is located or, if no such address is on file with the secretary, in the circuit court of Cole County. Summons shall issue and be served as in other civil actions.

2. If process is returned "not found", the attorney general shall cause publication to be made as in other civil cases in a newspaper of general circulation in the county where the registered office of the limited liability company is located, containing a notice of the pendency of the action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of limited liability companies against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the registered agent of the limited liability company as shown on the records of the secretary within ten days after the first publication thereof.

3. The certificate of the attorney general of the mailing of the notice shall be prima facie evidence of such notice. Such notice shall be published at least once a week for two successive weeks, and the first publication may begin at any time after the summons has been returned. Unless a limited liability company has been served with summons, no default shall be taken against it earlier than thirty days after the first publication of the notice.

(L. 1993 S.B. 66 & 20 § 359.790)

Effective 12-1-93

**Right to wind up upon dissolution--authorization.**

[347.147](#). Unless otherwise provided in the operating agreement, upon the dissolution of the limited liability company, the member or members who have not wrongfully dissolved the limited liability company or the legal representative of the last surviving member, not bankrupt, have, if management is vested in the members, the right to wind up the limited liability company affairs or, if management is vested in one or more managers, the right to authorize such manager or managers to undertake any act appropriate for winding up the affairs of the limited liability company or completing transactions unfinished at dissolution, except that any member, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

(L. 1993 S.B. 66 & 20 § 359.795)

Effective 12-1-93

**Court may liquidate assets, when.**

[347.149](#). The court shall have full power to liquidate the assets and business of a limited liability company:

(1) In an action by a creditor, after dissolution of the limited liability company, when the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the limited liability company is insolvent;

(2) Upon application by a limited liability company, or for cause shown, by a member, after dissolution, to have its liquidation continued under the supervision of the court;

(3) In an action filed by the attorney general after the issuance of a decree of dissolution for any of the causes provided in subsection 1 of section [347.143](#); or

(4) In an action filed by any member after the issuance of a decree of dissolution as provided in subsection 2 of section [347.143](#).

(L. 1993 S.B. 66 & 20 § 359.798)

Effective 12-1-93

**Foreign limited liability company, conflict of laws.**

[347.151](#). Subject to the constitution of this state:

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

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

(L. 1993 S.B. 66 & 20 § 359.800)

Effective 12-1-93

**Foreign company, registration required--application, contents, fee.**

[347.153](#). 1. Before transacting business in this state, a foreign limited liability company shall register in a format prescribed by the secretary unless otherwise exempt under subdivision (5) of subsection 5 of section [347.163](#). In order to register, a foreign limited liability company shall pay the required filing fee and shall submit to the secretary an application for registration as a foreign limited liability company signed on its behalf by a manager, member or other authorized agent and setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state;

(2) The jurisdiction in which it was formed and date of its formation;

(3) The purpose of the foreign limited liability company or the general character of the business it proposes to transact in this state;

(4) The name and physical address of its registered agent and registered office in this state, which office and agent shall be subject to the same rights and limitations as provided in sections [347.030](#) and [347.033](#);

(5) A statement that the secretary is appointed the agent of the foreign limited liability company for service of process if the limited liability company fails to maintain a registered agent in this state or if the agent cannot be found or served with the exercise of reasonable diligence;

(6) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

(7) A certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered; and

(8) A current certificate of good standing/existence from the secretary of state's office in the state of domicile, such document should be dated within sixty calendar days from filing.

2. The information provided by the foreign limited liability company under subdivisions (1) through (8) of subsection 1 of this section shall also be provided for each separate series of the limited liability company authorized to operate under section [347.186](#).

(L. 1993 S.B. 66 & 20 § 359.802, A.L. 1998 S.B. 844, A.L. 2004 H.B. 1664, A.L. 2013 H.B. 510)

**Proper application for registration, duties of secretary.**

[347.155](#). If the secretary finds that an application for registration conforms to law and all requisite fees have been paid:

(1) The secretary shall endorse on the accepted application the word "Filed", and the month, day and year of the filing thereof; and

(2) The accepted filing shall be retained in the secretary of state's records and a copy of the accepted filing and certificate of registration shall be returned to the person who submitted the document or that person's representative.

(L. 1993 S.B. 66 & 20 § 359.804, A.L. 2004 H.B. 1664)

**Name of foreign company regulated.**

347.157. A foreign limited liability company may register with the secretary under any name, whether or not it is the name under which it is registered in its jurisdiction of organization, that could be registered by a domestic limited liability company.

(L. 1993 S.B. 66 & 20 § 359.805)

Effective 12-1-93

**Amended certificates of registration required for certain foreign companies, when--additional information required, due date--fee.**

347.160. 1. A foreign limited liability company authorized to transact business in the state shall obtain an amended certificate of registration from the secretary of state if it changes:

(1) The name of the limited liability company;

(2) The state or country of its registration.

2. The amendment shall include a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered, such document should be dated within sixty calendar days from filing for acceptance.

3. The fee for filing an amended certificate of registration shall be twenty dollars.

(L. 2004 H.B. 1664)

**Cancellation, articles of.**

347.161. A foreign limited liability company may cancel its registration by filing with the secretary articles of cancellation signed on its behalf by a manager, member or other authorized agent. A cancellation does not terminate the authority of the secretary to accept service of process on the foreign limited liability company with respect to causes of action arising out of the transactions of business in this state.

(L. 1993 S.B. 66 & 20 § 359.808, A.L. 2004 H.B. 1664)

**Failure to comply with registration requirements, penalty--nomaintenance of action--validity of contracts--liability for debts--causes of action--activities not constituting transaction of**

## **business--foreign corporations and partnerships--construction.**

[347.163](#). 1. Every foreign limited liability company now transacting business in or which may hereafter transact business in this state which shall neglect or fail to comply with the provisions of section [347.153](#) shall be subject to a fine of not less than one thousand dollars. If the secretary is advised that a foreign limited liability company is transacting business within this state in contravention of sections [347.010](#) to [347.187](#), the secretary shall report the fact to the prosecuting attorney of any county in which the limited liability company is transacting business, and the prosecuting attorney shall, as soon thereafter as is practical, institute proceedings to recover the fine prescribed in this section. In addition to such penalty, no foreign limited liability company failing to comply with sections [347.010](#) to [347.187](#) may maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort, while the requirements of sections [347.010](#) to [347.187](#) have not been met.

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

3. A member of a foreign limited liability company is not liable for any debts, obligations or liabilities of the foreign limited liability company solely by reason of having transacted business in this state without registration.

4. A foreign limited liability company, by transacting business in this state without registration, shall be subject to the provisions of sections [506.500](#) to [506.520](#) with respect to causes of actions arising out of the transaction of business in this state.

5. Without excluding other activities which may not constitute transacting business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for purposes of sections [347.010](#) to [347.187](#), by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its members or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Borrowing money or creating evidence of debt, mortgage or lien on or other security interest in real or personal property;

(5) Securing or collecting debts or enforcing any rights in properties securing the same;

(6) Transacting any business in interstate commerce; or

(7) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of a like nature.

6. A foreign corporation, as defined in section [351.015](#) or section [355.066](#), shall not be deemed to be transacting business in this state for the purposes of section [351.572](#) solely for the reason that it is a member of a limited liability company.

7. A foreign limited partnership or foreign registered limited liability limited partnership, as defined in section [359.011](#), shall not be deemed to be transacting business in this state for the purposes of section [359.551](#) solely for the reason that it is a member of a limited liability company.

8. A foreign limited liability company as defined in sections [347.010](#) to [347.187](#) shall not be deemed to be transacting business in this state for the purposes of this section, solely for the reason that it is a member of a limited liability company.

9. A foreign registered limited liability partnership, as defined in section [358.020](#), shall not be deemed to be transacting business in this state for the purposes of section [351.572](#) solely for the reason that it is a member of a limited liability company.

10. The provisions of this section do not apply in determining the context or activities which may subject a foreign limited liability company to service of process, suit, taxation or regulation under any other statute of this state.

(L. 1993 S.B. 66 & 20 § 359.810, A.L. 1998 H.B. 1228 merged with S.B. 680 merged with S.B. 844)

#### **Cause of action authorized.**

[347.165](#). The secretary may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of sections [347.010](#) to [347.187](#).

(L. 1993 S.B. 66 & 20 § 359.812)

Effective 12-1-93

#### **Service of process, venue.**

[347.167](#). Service on a foreign limited liability company shall be as provided in section [347.033](#). Venue of actions against foreign limited liability companies shall be as provided in section [347.069](#).

(L. 1993 S.B. 66 & 20 § 359.814)

Effective 12-1-93

#### **Affirmation, penalties of perjury.**

[347.169](#). Execution of an application or a certificate by a foreign limited liability company constitutes an affirmation by the person who signed it under the penalties set out in section [575.040](#) that the facts stated therein are true and that the person so signing has the authority to execute such application or certificate.

(L. 1993 S.B. 66 & 20 § 359.815, A.L. 2004 H.B. 1664)

### **Action by member, conditions.**

[347.171](#). A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

(1) The plaintiff does not have the authority under the provisions of the operating agreement to cause the limited liability company to sue in its own right;

(2) The plaintiff has made demand on the authorized person or persons having the authority to cause the limited liability company to institute such action requesting that such persons cause the limited liability company to sue in its own right;

(3) The persons with such authority have refused to bring the action or, after adequate time to consider the demand, have failed to respond to such demand; and

(4) The plaintiff is a member of the limited liability company at the time of bringing the action, and was a member of the limited liability company at the time of the transaction of which he complains, or his status as a member of the limited liability company thereafter devolved upon him by operation of law or pursuant to the terms of the operating agreement from a person who was a member at such time.

(L. 1993 S.B. 66 & 20 § 359.816)

Effective 12-1-93

### **Derivative action--complaint.**

[347.173](#). In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the persons who would otherwise have the authority to cause the limited liability company to sue in its own right.

(L. 1993 S.B. 66 & 20 § 359.818)

Effective 12-1-93

### **Derivative action--attorney's fees.**

[347.175](#). If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

(L. 1993 S.B. 66 & 20 § 359.820)

Effective 12-1-93

### **Construction of law--estoppel--agency--equity--no impairment of obligation of contract.**

347.177. 1. Sections 347.010 to 347.187 shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of sections 347.010 to 347.187 among the states enacting it.

2. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to sections 347.010 to 347.187.

3. The law of estoppel shall apply to sections 347.010 to 347.187.

4. The law of agency shall apply under sections 347.010 to 347.187.

5. In any case not provided for in sections 347.010 to 347.187, the rules of law and equity shall govern.

6. Sections 347.010 to 347.187 shall not be construed so as to impair the obligations of any contract existing on August 28, 1993, nor to affect any action or proceedings begun or right accrued prior to August 28, 1993.

(L. 1993 S.B. 66 & 20 § 359.822)

Effective 12-1-93

#### **Fees.**

347.179. 1. The secretary shall charge and collect:

(1) For filing the original articles of organization, a fee of one hundred dollars;

(2) For filing the original articles of organization online, in an electronic format prescribed by the secretary of state, a fee of forty-five dollars;

(3) Applications for registration of foreign limited liability companies and issuance of a certificate of registration to transact business in this state, a fee of one hundred dollars;

(4) Amendments to and restatements of articles of limited liability companies to application for registration of a foreign limited liability company or any other filing otherwise provided for, a fee of twenty dollars;

(5) Articles of termination of limited liability companies or cancellation of registration of foreign limited liability companies, a fee of twenty dollars;

(6) For filing notice of merger or consolidation, a fee of twenty dollars;

(7) For filing a notice of winding up, a fee of twenty dollars;

(8) For issuing a certificate of good standing, a fee of five dollars;

(9) For a notice of the abandonment of merger or consolidation, a fee of twenty dollars;

(10) For furnishing a copy of any document or instrument, a fee of fifty cents per page;

(11) For accepting an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of twenty dollars;

(12) For filing a statement of change of address of registered office or registered agent, or both, a fee of five dollars;

(13) For any service of notice, demand, or process upon the secretary as resident agent of a limited liability company, a fee of twenty dollars, which amount may be recovered as taxable costs by the party instituting such suit, action, or proceeding causing such service to be made if such party prevails therein;

(14) For filing an amended certificate of registration a fee of twenty dollars; and

(15) For filing a statement of correction a fee of five dollars.

2. Fees mandated in subdivisions (1) and (2) of subsection 1 of this section and for application for reservation of a name in subdivision (11) of subsection 1 of this section shall be waived if an organizer who is listed as a member in the operating agreement of the limited liability company is a member of the Missouri National Guard or any other active duty military, resides in the state of Missouri, and provides proof of such service to the secretary of state.

(L. 1993 S.B. 66 & 20 § 359.825, A.L. 2004 H.B. 1664, A.L. 2009 H.B. 481, A.L. 2014 S.B. 600)

#### **Law to apply to interstate and international commerce.**

[347.181](#). To the fullest extent permitted by law, the provisions of sections [347.010](#) to [347.187](#) shall apply to commerce with foreign nations and among the several states for all purposes including the determination of the nature and extent of the rights and obligations of a limited liability company organized hereunder and the liability of its members and managers.

(L. 1993 S.B. 66 & 20 § 359.826)

Effective 12-1-93

#### **Additional duties of secretary.**

[347.183](#). In addition to the other powers of the secretary established in sections [347.010](#) to [347.187](#), the secretary shall, as is reasonably necessary to enable the secretary to administer sections [347.010](#) to [347.187](#) efficiently and to perform the secretary's duties, have the following powers including, but not limited to:

(1) The power to examine the books and records of any limited liability company to which sections [347.010](#) to [347.187](#) apply, and it shall be the duty of any manager, member or agent of such limited liability company having possession or control of such books and records to produce such books and records for examination on demand of the secretary or his designated employee; except that no person shall be subject to any criminal prosecution on account of any matter or thing which may be disclosed by examination of any limited liability company books and records, which

they may produce or exhibit for examination; or on account of any other matter or thing concerning which they may make any voluntary and truthful statement in writing to the secretary or his designated employee. All facts obtained in the examination of the books and records of any limited liability company, or through the voluntary sworn statement of any manager, member, agent or employee of any limited liability company, shall be treated as confidential, except insofar as official duty may require the disclosure of same, or when such facts are material to any issue in any legal proceeding in which the secretary or his designated employee may be a party or called as witness, and, if the secretary or his designated employee shall, except as provided in this subdivision, disclose any information relative to the private accounts, affairs, and transactions of any such limited liability company, he shall be guilty of a class C misdemeanor. If any manager, member or registered agent in possession or control of such books and records of any such limited liability company shall refuse a demand of the secretary or his designated employee, to exhibit the books and records of such limited liability company for examination, such person shall be guilty of a class B misdemeanor;

(2) The power to cancel or disapprove any articles of organization or other filing required under sections [347.010](#) to [347.187](#), if the limited liability company fails to comply with the provisions of sections [347.010](#) to [347.187](#) by failing to file required documents under sections [347.010](#) to [347.187](#), by failing to maintain a registered agent, by failing to pay the required filing fees, by using fraud or deception in effecting any filing, by filing a required document containing a false statement, or by violating any section or sections of the criminal laws of Missouri, the federal government or any other state of the United States. Thirty days before such cancellation shall take effect, the secretary shall notify the limited liability company with written notice, either personally or by certified mail, deposited in the United States mail in a sealed envelope addressed to such limited liability company's last registered agent in office, or to one of the limited liability company's members or managers. Written notice of the secretary's proposed cancellation to the limited liability company, domestic or foreign, shall specify the reasons for such action. The limited liability company may appeal this notice of proposed cancellation to the circuit court of the county in which the registered office of such limited liability company is or is proposed to be situated by filing with the clerk of such court a petition setting forth a copy of the articles of organization or other relevant documents and a copy of the proposed written cancellation thereof by the secretary, such petition to be filed within thirty days after notice of such cancellation shall have been given, and the matter shall be tried by the court, and the court shall either sustain the action of the secretary or direct him to take such action as the court may deem proper. An appeal from the circuit court in such a case shall be allowed as in civil action. The limited liability company may provide information to the secretary that would allow the secretary to withdraw the notice of proposed cancellation. This information may consist of, but need not be limited to, corrected statements and documents, new filings, affidavits and certified copies of other filed documents;

(3) The power to rescind cancellation provided for in subdivision (2) of this section upon compliance with either of the following:

(a) The affected limited liability company provides the necessary documents and affidavits indicating the limited liability company has corrected the conditions causing the proposed cancellation or the cancellation; or

(b) The limited liability company provides the correct statements or documentation that the limited liability company is not in violation of any section of the criminal code; and

(4) The power to charge late filing fees for any filing fee required under sections [347.010](#) to [347.187](#) and the power to impose civil penalties as provided in section [347.053](#). Late filing fees shall be assessed at a rate of ten dollars for each thirty-day period of delinquency;

(5) (a) The power to administratively cancel an articles of organization if the limited liability company's period of duration stated in articles of organization expires.

(b) Not less than thirty days before such administrative cancellation shall take effect, the secretary shall notify the limited liability company with written notice, either personally or by mail. If mailed, the notice shall be deemed delivered five days after it is deposited in the United States mail in a sealed envelope addressed to such limited liability company's last registered agent and office or to one of the limited liability company's managers or members.

(c) If the limited liability company does not timely file an articles of amendment in accordance with section [347.041](#) to extend the duration of the limited liability company, which may be any number of years or perpetual, or demonstrate to the reasonable satisfaction of the secretary that the period of duration determined by the secretary is incorrect, within sixty days after service of the notice is perfected by posting with the United States Postal Service, then the secretary shall cancel the articles of organization by signing an administrative cancellation that recites the grounds for cancellation and its effective date. The secretary shall file the original of the administrative cancellation and serve a copy on the limited liability company as provided in section [347.051](#).

(d) A limited liability company whose articles of organization has been administratively cancelled continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section [347.147](#) and notify claimants under section [347.141](#).

(e) The administrative cancellation of an articles of organization does not terminate the authority of its registered agent.

(6) (a) The power to rescind an administrative cancellation and reinstate the articles of organization.

(b) Except as otherwise provided in the operating agreement, a limited liability company whose articles of organization has been administratively cancelled under subdivision (5) of this section may file an articles of amendment in accordance with section [347.041](#) to extend the duration of the limited liability company, which may be any number or perpetual.

(c) A limited liability company whose articles of organization has been administratively cancelled under subdivision (5) of this section may apply to the secretary for reinstatement. The applicant shall:

a. Recite the name of the limited liability company and the effective date of its administrative cancellation;

b. State that the grounds for cancellation either did not exist or have been eliminated, as applicable, and be accompanied by documentation satisfactory to the secretary evidencing the same;

c. State that the limited liability company's name satisfies the requirements of section [347.020](#);

d. Be accompanied by a reinstatement fee in the amount of one hundred dollars, or such greater amount as required by state regulation, plus any delinquent fees, penalties, and other charges as determined by the secretary to then be due.

(d) If the secretary determines that the application contains the information and is accompanied by the fees required in paragraph (c) of this subdivision and that the information and fees are correct, the secretary shall rescind the cancellation and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original articles of organization, and serve a copy on the limited liability company as provided in section [347.051](#).

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative cancellation of the articles of organization and the limited liability company may continue carrying on its business as if the administrative cancellation had never occurred.

(f) In the event the name of the limited liability company was reissued by the secretary to another entity prior to the time application for reinstatement was filed, the limited liability company applying for reinstatement may elect to reinstate using a new name that complies with the requirements of section [347.020](#) and that has been approved by appropriate action of the limited liability company for changing the name thereof.

(g) If the secretary denies a limited liability company's application for reinstatement following administrative cancellation of the articles of organization, he or she shall serve the limited liability company as provided in section [347.051](#) with a written notice that explains the reason or reasons for denial.

(h) The limited liability company may appeal a denial of reinstatement as provided for in subdivision (2) of this section.

(7) Subdivision (6) of this section shall apply to any limited liability company whose articles of organization was cancelled because such limited liability company's period of duration stated in the articles of organization expired on or after August 28, 2003.

(L. 1993 S.B. 66 & 20 § 359.828, A.L. 2009 H.B. 481 merged with S.B. 217)

#### **Member's interest not security.**

[347.185](#). It shall be rebuttably presumed that a member's interest in a limited liability company in which management is not vested in one or more managers is not a security for purposes of any and all laws of this state regulating the sale or exchange of securities.

(L. 1993 S.B. 66 & 20 § 359.830)

Effective 12-1-93

**Designated series of members, managers, or limited liability interests permitted-- requirements.**

347.186. 1. An operating agreement may establish or provide for the establishment of a designated series of members, managers, or limited liability company interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations. To the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

2. (1) Notwithstanding any other provisions of law to the contrary, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof. Such particular series shall be deemed to have possession, custody, and control only of the books, records, information, and documentation related to such series and not of the books, records, information, and documentation related to the limited liability company as a whole or any other series thereof if all of the following apply:

(a) The operating agreement creates one or more series;

(b) Separate and distinct records are maintained for or on behalf of any such series;

(c) The assets associated with any such series, whether held directly or indirectly, including through a nominee or otherwise, are accounted for separately from the other assets of the limited liability company or of any other series;

(d) The operating agreement provides for the limitations on liabilities of a series described in this subdivision;

(e) Notice of the limitation on liabilities of a series described in this subdivision is included in the limited liability company's articles of organization; and

(f) The limited liability company has filed articles of organization that separately identify each series which is to have limited liability under this section.

(2) With respect to a particular series, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for or otherwise existing with respect to a limited liability company generally, or any other series thereof, shall be enforceable against the assets of such series, subject to the provisions of subdivision (1) of this subsection.

(3) Compliance with paragraphs (e) and (f) of subdivision (1)\* of this subsection shall constitute notice of such limitation of liability of a series.

(4) A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct business and exercise the powers of a limited liability company under this chapter. The limited liability company and any of its series may elect to consolidate its operations as a single taxpayer to the extent permitted under

applicable law, elect to work cooperatively, elect to contract jointly, or elect to be treated as a single business for the purposes of qualification or authorization to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract.

3. Except in the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under sections [347.153](#) and [347.157](#), the name of the series with limited liability is required to contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under sections [347.153](#) and [347.157](#), the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

4. (1) (a) Upon filing of articles of organization setting forth the name of each series with limited liability, in compliance with section [347.037](#) or amendments under section [347.041](#), the series' existence shall begin.

(b) Each copy of the articles of organization stamped "Filed" and marked with the filing date shall be conclusive evidence that all required conditions have been met and that the series has been or shall be legally organized and formed under this section and is notice for all purposes of all other facts required to be set forth therein.

(c) The name of a series with limited liability under this section may be changed by filing articles of amendment with the secretary of state pursuant to section [347.041](#), identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member-managed series or of the managers of a manager-managed series may be changed by an amendment to the articles of organization with the secretary of state.

(d) A series with limited liability under this section may be dissolved by filing with the secretary of state articles of amendment pursuant to section [347.041](#) identifying the series being dissolved or by the dissolution of the limited liability company as provided in section [347.045](#). Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection 2 of this section shall not affect the limitation on liabilities of such series provided by subsection 2 of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section [347.045](#).

(e) Articles of organization, amendment, or termination described under this subdivision may be executed by the limited liability company or any manager, person, or entity designated in the operating agreement for the limited liability company.

(2) If different from the limited liability company, the articles of organization shall list the names of the members for each series if the series is member-managed or the names of the managers if the series is manager-managed.

(3) A series of a limited liability company shall be deemed to be in good standing as long as the limited liability company is in good standing.

(4) The registered agent and registered office for the limited liability company appointed under section [347.033](#) shall serve as the agent and office for service of process for each series in this state.

5. (1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as an operating agreement may provide and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior and subordinate to or different from existing classes and groups of members or managers associated with the series.

(2) A series may be managed either by the member or members associated with the series or by the manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(3) An operating agreement may grant to all or certain identified members or managers, or to a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights or ability to otherwise participate in the management or governance of such series, but any such member or class or group of members are owners of the series.

(4) Except as modified in this section, the provisions of this chapter which are generally applicable to limited liability companies and their managers, members, and transferees shall be applicable to each particular series with respect to the operation of such series.

(5) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(6) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series, terminate the continued membership of a member in the limited liability company, or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(7) An operating agreement may impose restrictions, duties, and obligations on members of the limited liability company or any series thereof as a matter of internal governance, including, without limitation, those with regard to:

(a) Choice of law, forum selection, or consent to personal jurisdiction;

(b) Capital contributions;

(c) Restrictions on, or terms and conditions of, the transfer of membership interests;

(d) Restrictive covenants, including noncompetition, nonsolicitation, and confidentiality provisions;

(e) Fiduciary duties; and

(f) Restrictions, duties, or obligations to or for the benefit of the limited liability company, other series thereof, or their affiliates.

6. (1) If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(2) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers, or duties and has limited the liabilities of such series so that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on its own behalf may register to do business in this state in accordance with this chapter. The limitation of liability shall also be stated on the application for registration. As required under section [347.153](#), the registration application filed shall identify each series being registered to do business in the state by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only and not against the assets of the foreign limited liability company generally or any other series thereof, and none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

7. Nothing in sections [347.039](#), [347.153](#), or [347.186](#) shall be construed to alter existing Missouri statute or common law providing any cause of action for fraudulent conveyance, including but not limited to chapter 428, or any relief available under existing law that permits a challenge to limited liability.

(L. 2013 H.B. 510)

\*Words "subparagraphs (e) and (f) of paragraph (1) of subdivision 1" appear in original rolls.

### **Classification for purposes of taxation--treatment.**

[347.187](#). 1. A limited liability company created pursuant to sections [347.010](#) to [347.187](#) or entering the state pursuant to sections [347.010](#) to [347.187](#) and its authorized persons, or their equivalent, shall have the duty to withhold and pay such taxes as are imposed by the laws of this state or any political subdivision thereof on a basis consistent with such limited liability company's classification pursuant to Section 7701 of the Internal Revenue Code of 1986, as amended.

2. Solely for the purposes of chapter 143, chapter 144, and chapter 288, a limited liability company and its members shall be classified and treated on a basis consistent with the limited liability company's classification for federal income tax purposes.

(L. 1993 S.B. 66 & 20 § 359.832, A.L. 1996 H.B. 1368, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

### **Requires filing property control affidavit in certain cities,including Kansas City.**

[347.189](#). Any limited liability company that owns and rents or leases real property, or owns unoccupied real property, located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person, who has management control and responsibility for the real property owned and leased or rented by the limited liability company, or owned by the limited liability company and unoccupied.

(L. 2000 S.B. 896 § 1, Repealed L. 2001 S.B. 288, A.L. 2001 S.B. 178 merged with S.B. 345)

### **Law to apply, merger or consolidation.**

[347.700](#). 1. A merger or consolidation solely between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations shall be governed by and subject to chapter 351 or 355, as is applicable.

2. A merger or consolidation solely between any two or more domestic general partnerships or one or more domestic general partnerships and one or more foreign general partnerships shall be governed by and subject to section [358.520](#).

3. A merger or consolidation solely between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships shall be governed by and subject to section [359.165](#).

4. A merger or consolidation solely between any two or more domestic limited liability companies or one or more domestic limited liability companies and one or more foreign limited liability companies shall be governed by sections [347.127](#) to [347.133](#).

5. A business combination involving any resident domestic corporation and any interested shareholder of such resident domestic corporation shall be governed by and subject to section [351.459](#).

6. Subject to the provisions of this section, any merger or consolidation between one or more domestic corporations and any one or more constituent entities at least one of which is not a corporation, one or more domestic general partnerships and any one or more constituent entities at least one of which is not a general partnership, one or more domestic limited partnerships and any one or more constituent entities at least one of which is not a limited partnership, one or more domestic limited liability partnerships and any one or more constituent entities at least one of which is not a limited liability partnership, one or more domestic limited liability limited partnerships and any one or more constituent entities at least one of which is not a limited liability limited partnership, or one or more domestic limited liability companies and any one or more constituent entities at least one of which is not a limited liability company shall be governed by and subject to the provisions of sections [347.700](#) to [347.735](#).

(L. 1993 S.B. 66 & 20 § 359.900, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2003 S.B. 394)

#### **Definitions.**

[347.705](#). As used in sections [347.700](#) to [347.735](#), the following terms mean:

(1) "Constituent entity", each person that is a party to a merger or consolidation subject to sections [347.700](#) to [347.735](#);

(2) "New entity", the person into which constituent entities consolidate, as identified in the agreement of consolidation or articles of consolidation provided for in sections [347.700](#) to [347.735](#);

(3) "Organizational document", with respect to a corporation, its articles of corporation or their equivalent, with respect to a general partnership, its fictitious name registration or its equivalent, with respect to a limited partnership, its certificate of limited partnership or its equivalent, with respect to a limited liability company, its articles of organization or their equivalent, with respect to a limited liability partnership, its registration as a limited liability partnership or its equivalent, with respect to a limited liability limited partnership, its certificate of limited partnership and its registration as a limited liability partnership or their equivalent, and with respect to any other type of person, the documents, if any, necessary to form and organize such person under the laws of the jurisdiction under which such person was or is formed and organized;

(4) "Person", a domestic or foreign general partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, trust, business trust, real estate investment trust and other association or business entity;

(5) "Surviving entity", the constituent entity surviving a merger, as identified in the agreement of merger or articles of merger provided for in sections [347.700](#) to [347.735](#).

(L. 1993 S.B. 66 & 20 § 359.902, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Merger or consolidation authorized--corporations, partnerships, limited liability company.**

[347.710](#). Subject to the provisions of sections [347.700](#) to [347.735](#), any one or more domestic corporations may merge or consolidate into or with any one or more persons at least one of which is not a corporation, any one or more domestic general partnerships may merge or consolidate into or with any one or more persons at least one of which is not a general partnership, any one or more domestic limited partnerships may merge or consolidate into or with any one or more persons at least one of which is not a limited partnership, any one or more domestic limited liability limited partnerships may merge or consolidate into or with any one or more persons at least one of which is not a limited liability limited partnership, and any one or more domestic limited liability companies may merge or consolidate into or with any one or more persons at least one of which is not a limited liability company.

(L. 1993 S.B. 66 & 20 § 359.903, A.L. 1997 H.B. 655 merged with S.B. 170)

Effective 6-24-97 (H.B. 655)

5-20-97 (S.B. 170)

**Agreement of merger or consolidation--contents.**

[347.715](#). Each constituent entity shall enter into a written agreement of merger or consolidation. The agreement of merger or consolidation shall set forth:

(1) The name and state or country of organization of each constituent entity and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;

(2) The terms and conditions of the merger or consolidation;

(3) The manner and basis of converting the interests or shares of stock in each constituent entity in the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, of the new entity or of any other person, or, in whole or in part, into cash or other property;

(4) In the case of a merger, such amendments to the organizational documents of the surviving entity, as are desired to be effected by the merger, or that no such changes are desired;

(5) In the case of a consolidation, all statements required to be set forth in the organizational documents of the new entity; and

(6) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable by the constituent entities.

(L. 1993 S.B. 66 & 20 § 359.904)

Effective 12-1-93

**Agreement of merger or consolidation--authorization and approval--certification--abandonment, procedure.**

[347.720](#). 1. The agreement of merger or consolidation required by section [347.715](#) shall be authorized and approved in the following manner:

(1) A constituent entity that is a domestic general partnership shall have the agreement of merger or consolidation authorized and approved by all of the partners, unless otherwise provided in the articles or agreement of partnership;

(2) A constituent entity that is a domestic limited partnership shall have the agreement of merger or consolidation approved by all general partners and by all of the limited partners unless otherwise provided in the articles or agreement of limited partnership;

(3) A constituent entity that is a domestic corporation shall have the agreement of merger or consolidation approved in the manner applicable to a merger of two or more domestic corporations as provided in chapter 351 or 355, as is applicable;

(4) A constituent entity that is a domestic limited liability company shall have the agreement of merger or consolidation approved in the manner provided in section [347.079](#); and

(5) Each constituent entity formed under the laws of a jurisdiction other than this state shall have the agreement of merger or consolidation approved in accordance with the laws of such other jurisdiction.

2. The fact that the agreement of merger or consolidation has been authorized and approved in accordance with this section shall be certified on the agreement of merger or consolidation on behalf of each constituent entity:

(1) In the case of any domestic general or limited partnership, by any general partner;

(2) In the case of any domestic corporation, by its president or a vice president, and by its secretary or an assistant secretary;

(3) In the case of any domestic limited liability company, by any authorized person as defined in section [347.015](#); and

(4) In the case of any constituent entity formed under the laws of any jurisdiction other than this state, in accordance with the laws of such other jurisdiction.

3. After the agreement of merger or consolidation is authorized and approved, unless the agreement of merger or consolidation provides otherwise, and at any time before the agreement of merger or consolidation or certificate of merger or consolidation is effective as provided for in section [347.725](#), the agreement of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the agreement of merger or consolidation or, if none is set forth, with the approval of those persons or individuals entitled to approve the merger or consolidation as provided in subsection 1 of this section.

(L. 1993 S.B. 66 & 20 § 359.905, A.L. 2003 S.B. 394)

**Articles of merger or consolidation, contents--filing--duplicates,delivery--effective, when.**

347.725. 1. After an agreement of merger or consolidation is authorized, approved, and certified in accordance with section 347.720, the surviving or new entity shall file the agreement of merger or consolidation with the secretary of state or, in lieu thereof, articles of merger or consolidation, duly executed, by each constituent entity setting forth:

(1) The name, state or country of organization and nature or type of each of the constituent entities;

(2) That an agreement of merger or consolidation has been authorized and approved by each of the constituent entities in accordance with section 347.720;

(3) The effective date of the merger or consolidation which may not exceed ninety days after the date of filing of the agreement of merger or consolidation or the articles of merger or consolidation;

(4) The name of the surviving or new entity;

(5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new entity;

(6) In the case of a merger, such amendments or changes to the organizational documents of the surviving entity, as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the organizational documents of the surviving entity shall be its organizational documents;

(7) In the case of a consolidation, that the organizational documents of the new entity shall be as set forth in an attachment to such agreement or articles of merger or consolidation;

(8) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new entity, stating the address thereof; and

(9) That a copy of the agreement of merger or consolidation will be furnished by the surviving or new entity, on request and without cost, to any partner, shareholder, member, or their equivalent of any entity that is a party to the merger or consolidation.

2. An original of the agreement of merger or consolidation or articles of merger or consolidation for each domestic constituent entity to the merger or consolidation shall be delivered to the secretary of state for filing. A person who executes an agreement or articles of merger or consolidation as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing. Unless the secretary of state finds that the agreement or articles of merger or consolidation do not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Endorse on the document the word "Filed" and the day, month and year of the filing thereof;

(2) File the document in the secretary of state's office;

(3) Issue a certificate of merger or consolidation, which shall set forth the names of all constituent entities, the name of the state or country under the laws of which each was formed, whether a merger or consolidation is involved, the name of the surviving or new entity, the name of the state or country under the laws of which the new entity is formed, the date of filing of the agreement of merger or consolidation or articles of merger or consolidation with him, and the effective date of the merger or consolidation;

(4) Return a copy of the certificate of merger or consolidation to the person who filed the agreement or articles of merger or consolidation or his representative; and

(5) File a copy of the certificate of merger or consolidation in the records of the secretary of state for each domestic constituent entity.

3. A merger or consolidation shall be effective when the requirements for effectiveness of the laws under which any constituent entity was formed have been met and the certificate of merger or consolidation has been filed by the secretary of state, unless a later date is specified in the agreement of merger or consolidation or articles of merger or consolidation, in which case, the effective date of the merger or consolidation will be the date so specified which shall, in no event, exceed ninety days after the date the agreement of merger or consolidation or articles of merger or consolidation is delivered to the secretary of state for filing.

(L. 1993 S.B. 66 & 20 § 359.906, A.L. 2004 H.B. 1664)

**Consummation of merger or consolidation, effects--no impairment of shares or rights.**

347.730. 1. Consummation of a merger or consolidation shall have the following effects:

(1) The constituent entities party to the agreement of merger or consolidation shall be a single entity which, in the case of a merger, shall be the entity designated in the agreement of merger as the surviving entity and, in the case of a consolidation, shall be the new entity provided for in the agreement of consolidation;

(2) The separate existence of each constituent entity, except the surviving entity or the new entity, shall cease;

(3) The surviving or new entity shall thereupon and thereafter possess all rights, privileges, immunities, powers, and franchises possessed by each of the constituent entities and shall be subject to all restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity;

(4) All rights, causes of action, property and assets of whatsoever kind or description whether real, personal, tangible, or intangible, of each of the constituent entities, and all debts due on whatever account to any of them, including subscriptions for shares, promises to make capital contributions, and all other causes in action, belonging to any of them, shall be taken and be deemed to be transferred to and vested in the surviving or new entity without further act or deed;

(5) Title to all real or personal property and any interest therein vested in any constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving or new entity shall thereafter be responsible and liable for all liabilities and obligations of each of the constituent entities. Any claim existing or action or proceeding pending by or against any constituent entity may be prosecuted as if such merger or consolidation had not taken place, or the surviving or new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) In the case of a merger, the organizational documents of the surviving entity shall be amended to the extent provided in the agreement or articles of merger and the organizational documents, of each other domestic constituent entity shall be deemed cancelled by the filing of the certificate of merger or consolidation by the secretary of state pursuant to subsection 2 of section [347.725](#);

(9) In the case of a consolidation, the statements set forth in the agreement or articles of consolidation and which are required or permitted to be set forth in the organizational documents of the new entity shall be deemed to be the original organizational documents of the new entity and the organizational documents of each other domestic constituent entity shall be deemed cancelled by the filing by the secretary of state pursuant to subsection 2 of section [347.725](#); and

(10) The interests, shares, or their equivalent, in each constituent entity, that are to be converted or exchanged into interests, shares, or other securities, cash, obligations, or other property under the terms of the agreement of merger or consolidation shall be so converted. The former holders thereof shall be entitled only to the rights provided in the agreement of\* merger or consolidation or the rights otherwise provided by law.

2. Nothing in sections [347.700](#) to [347.735](#) shall abridge or impair any dissenter's or appraisal shares or their equivalent rights that may otherwise be available to the members or shareholders or other holders of an interest, in any constituent entity.

(L. 1993 S.B. 66 & 20 § 359.907)

Effective 12-1-93

\*Word "or" appears in original rolls.

### **Merger or consolidation, requirements and limitations--what law to govern.**

[347.735](#). 1. Notwithstanding any provisions in sections [347.700](#) to [347.730](#) to the contrary, any proposed merger or consolidation otherwise permitted pursuant to section [347.710](#) in which any constituent entity is organized or formed under the law of any jurisdiction other than this state shall be permitted only if:

(1) The merger or consolidation is permitted by the law of the state or country under whose laws each foreign constituent entity is organized or formed, and each foreign constituent entity complies with that law in effecting the merger or consolidation;

(2) Each foreign constituent entity complies with section [347.725](#) if it is the surviving entity or the new entity;

(3) Each domestic constituent entity complies with the applicable provisions of sections [347.715](#) and [347.720](#), and, if it is the surviving entity or the new entity, complies with section [347.725](#).

2. If the surviving entity or new entity is to be governed by the laws of any jurisdiction other than this state, then, upon the effectiveness of a merger or consolidation, the surviving entity or new entity shall file a statement with the secretary of state that the surviving entity or the new entity, as the case may be, agrees that it is subject to service of process in this state in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the laws of this state and for enforcement of any obligation of the surviving entity or new entity arising from the merger or consolidation.

3. The effect of such merger or consolidation shall be as provided in section [347.730](#), if the surviving entity or new entity is to be governed by the laws of this state. If the surviving entity or new entity is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as provided in section [347.730](#) except insofar as the laws of such other jurisdiction provide otherwise.

(L. 1993 S.B. 66 & 20 § 359.908)

Effective 12-1-93

**Additional fee--expiration date.**

[347.740](#). The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. The provisions of this section shall expire on December 31, 2017.

(L. 1994 S.B. 635, A.L. 2001 H.B. 453 merged with S.B. 288, A.L. 2008 S.B. 1150)

Expires 12-31-17



Missouri General Assembly

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