

NEW HAMPSHIRE REVISED STATUTES ANNOTATED
***** CURRENT THROUGH CHAPTER 118 OF THE 2010 SESSION *****
TITLE XXVIII. PARTNERSHIPS
CHAPTER 304-C. LIMITED LIABILITY COMPANIES

SUBCHAPTER TABLE OF CONTENTS

GENERAL PROVISIONS	5
FORMATION; CERTIFICATE OF FORMATION	15
MERGER AND CONVERSION	18
DISSENTERS' RIGHTS.....	24
MEMBERS AND MANAGERS.....	31
FINANCE	42
DISTRIBUTIONS	43
ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS	45
DISSOLUTION	47
FOREIGN LIMITED LIABILITY COMPANIES	56
ACTIONS AND DERIVATIVE ACTIONS.....	66
MISCELLANEOUS.....	67

DETAILED TABLE OF CONTENTS

GENERAL PROVISIONS	5
§ 304-C:1. Definitions.....	5
§ 304-C:2. Filing Requirements.....	6
§ 304-C:3. Name Set Forth in Certificate	7
§ 304-C:4. Reservation of Name.....	9
§ 304-C:5. Registered Office; Registered Agent.....	10
§ 304-C:6. Service of Process on Domestic Limited Liability Companies	11
§ 304-C:7. Nature of Business Permitted; Powers	11
§ 304-C:8. Business Transactions of Member or Manager With the Limited Liability Company.....	13
§ 304-C:9. Indemnification	13
§ 304-C:10. Service of Process on Managers and Liquidating Trustees	14
§ 304-C:11. Effective Time and Date of Document.....	15
FORMATION; CERTIFICATE OF FORMATION	15
§ 304-C:12. Certificate of Formation	15
§ 304-C:13. Amendment to Certificate of Formation	16
§ 304-C:14. Execution, Amendment or Cancellation by Judicial Order	16
§ 304-C:15. Filing	16
§ 304-C:16. Notice	17
§ 304-C:17. Restated Certificate	17
MERGER AND CONVERSION	18
§ 304-C:17-a. Conversion of Other Business Entities to Limited Liability Companies	18
§ 304-C:17-b. Approval of Conversion of a Limited Liability Company	20
§ 304-C:18. Merger.....	20
§ 304-C:19. Approval of Merger.....	21
§ 304-C:20. Agreement of Merger	21
§ 304-C:21. Certificate of Merger.....	22
§ 304-C:22. Effects of Merger	23
DISSENTERS' RIGHTS.....	24
§ 304-C:22-a. Definitions and Construction	24
§ 304-C:22-b. Dissenters' Rights	25
§ 304-C:22-c. Notice of Dissenters' Rights	25
§ 304-C:22-d. Notice of Intent to Demand Payment.....	25
§ 304-C:22-e. Dissenters' Notice	26
§ 304-C:22-f. Duty to Demand Payment.....	26
§ 304-C:22-g. Payment	27

§ 304-C:22-h. Failure to Take Action	27
§ 304-C:22-i. After-Acquired Limited Liability Company Interests.....	28
§ 304-C:22-j. Procedure if Member Dissatisfied With Payment or Offer.....	28
§ 304-C:22-k. Court Action	28
§ 304-C:22-l. Court Costs and Counsel Fees	29
§ 304-C:22-m. Procedures as to Assignees of Financial Rights.....	30
MEMBERS AND MANAGERS.....	31
§ 304-C:23. Admission of Members	31
§ 304-C:24. Classes, Meetings, and Voting of Members	32
§ 304-C:25. Liability to Third Parties	34
§ 304-C:26. Agency Power of Members and Managers	34
§ 304-C:27. Events of Dissociation.....	35
§ 304-C:28. Access to and Confidentiality of Information; Records	37
§ 304-C:29. Remedies for Breach of Limited Liability Company Agreement by Member	39
§ 304-C:30. Admission of Managers	39
§ 304-C:31. Management of Limited Liability Company	39
§ 304-C:32. Contributions by a Manager.....	40
§ 304-C:33. Classes and Voting of Managers	41
§ 304-C:34. Remedies for Breach of Limited Liability Company Agreement by Manager	41
§ 304-C:35. Reliance on Reports and Information by Member or Manager	42
FINANCE	42
§ 304-C:36. Form of Contribution	42
§ 304-C:37. Liability for Contribution.....	42
§ 304-C:38. Allocation of Profits and Losses	43
§ 304-C:39. Allocation of Distributions.....	43
DISTRIBUTIONS	43
§ 304-C:40. Interim Distributions	43
§ 304-C:41. Distribution Upon Cessation of Membership or Merger.....	44
§ 304-C:42. Distribution in Kind	44
§ 304-C:43. Right to Distribution	44
§ 304-C:44. Limitations on Distribution	44
ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS	45
§ 304-C:45. Nature of Limited Liability Company Interest.....	45
§ 304-C:46. Assignment of Limited Liability Company Interest.....	45
§ 304-C:47. Rights of Judgment Creditor	46
§ 304-C:48. Right of Assignee to Become Member	46
§ 304-C:49. Powers of Estate of Deceased or Incompetent Member	47
DISSOLUTION	47
§ 304-C:50. Dissolution	47
§ 304-C:51. Judicial Dissolution.....	48
§ 304-C:52. Grounds for Administrative Dissolution	48
§ 304-C:53. Procedure for and Effect of Administrative Dissolution	49
§ 304-C:54. Reinstatement Following Administrative Dissolution	49
§ 304-C:54-a. Late Reinstatement Hearing; Notice; Requirements	50
§ 304-C:55. Appeal From Denial of Reinstatement	52
§ 304-C:56. Winding Up.....	52
§ 304-C:57. Agency Power of Managers or Members After Dissolution	53
§ 304-C:58. Distribution of Assets.....	53
§ 304-C:59. Certificate of Cancellation	54
§ 304-C:60. Known Claims Against Dissolved Limited Liability Company.....	54
§ 304-C:61. Unknown Claims Against Dissolved Limited Liability Company	55
FOREIGN LIMITED LIABILITY COMPANIES	56
§ 304-C:62. Law Governing	56
§ 304-C:63. Transactions Not Constituting Doing Business.....	56
§ 304-C:64. Registration Required; Application.....	57

§ 304-C:65. Issuance of Registration	58
§ 304-C:66. Name; Registered Office; Registered Agent	58
§ 304-C:67. Amendments to Application.....	62
§ 304-C:68. Cancellation of Registration.....	62
§ 304-C:69. Doing Business Without Registration	63
§ 304-C:70. Service of Process on Registered Foreign Limited Liability Companies	63
§ 304-C:71. Service of Process on Unregistered Foreign Limited Liability Companies	64
§ 304-C:72. Grounds for Revocation	64
§ 304-C:73. Procedure for and Effect of Revocation	65
§ 304-C:74. Appeal From Revocation	65
ACTIONS AND DERIVATIVE ACTIONS.....	66
§ 304-C:75. Actions by and Against the Limited Liability Company.....	66
§ 304-C:76. Right to Bring Action on Behalf of Limited Liability Company	66
§ 304-C:77. Effect of Lack of Authority to Bring Action	67
MISCELLANEOUS.....	67
§ 304-C:78. Construction and Application of Chapter and Limited Liability Company Agreement	67
§ 304-C:79. Cases Not Provided for in This Chapter.....	67
§ 304-C:80. Annual Report for Secretary of State	67
§ 304-C:81. Fees	68
§ 304-C:82. Administration	69
§ 304-C:83. Rulemaking	70
§ 304-C:84. Severability	70
§ 304-C:85. Reserved Power of State of New Hampshire to Alter or Repeal Chapter	70

GENERAL PROVISIONS

§ 304-C:1. Definitions

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

I. “Bankruptcy” means an event that causes a person to cease to be a member as provided in RSA 304-C:27, I(d).

I-a. “Business entity” means a domestic or foreign limited liability company, corporation, general partnership, limited partnership or nondepository trust company organized under RSA 392 or RSA 392-A.

II. “Certificate of formation” means the certificate referred to in RSA 304-C:12, and the certificate as amended.

III. “Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, that a person contributes to a limited liability company in his capacity as a member.

IV. “Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

V. “Limited liability company” and “domestic limited liability company” mean a limited liability company formed under the laws of New Hampshire and having one or more members.

VI. “Limited liability company agreement” means a written agreement of the members or a document adopted by the sole member as to the affairs of a limited liability company and the conduct of its business. A limited liability company agreement or another written agreement or writing:

(a) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement:

(1) If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(2) Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability

company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing and requests, orally, in writing or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment; and

(b) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph (a), or by reason of its having been signed by a representative as provided in this chapter.

VII. “Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

VIII. “Liquidating trustee” means a person carrying out the winding up of a limited liability company.

IX. “Manager” means a person who is named as a manager of a limited liability company in or designated as a manager of a limited liability company pursuant to a limited liability company agreement or similar instrument under which the limited liability company is formed.

X. “Member” means a person who has been admitted to a limited liability company as a member as provided in RSA 304-C:23 or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

XI. “Person” means a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

XII. “Publicly traded limited liability company interest” means any limited liability company interest that is:

(a) Listed on a national securities exchange; or

(b) Authorized for quotation on an inter-dealer quotation system of a registered national securities association.

XIII. “State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of New Hampshire.

§ 304-C:2. Filing Requirements.

I. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

II. All required documents shall be filed in the office of the secretary of state.

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

IV. The document shall be typewritten or printed.

V. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals, and the statement of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.

VI. Except as specifically provided in other sections of this chapter, the document shall be executed:

(a) By a manager of a limited liability company that has a manager;

(b) By a member of a limited liability company that does not have a manager;

(c) If the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, by that fiduciary.

VII. The person executing the document shall sign it and state beneath or opposite the person's signature his or her name and the capacity in which the person signs. Signature pursuant to 294-E:9 shall be sufficient to satisfy this requirement.

VIII. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by one exact or conformed copy, the correct fee, and any penalty required by this chapter or other law. Documents filed electronically need not be accompanied by an exact or conformed copy, but must be accompanied by the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law. Annual reports delivered for filing pursuant to this chapter need not be accompanied by an exact or conformed copy.

§ 304-C:3. Name Set Forth in Certificate

I. The name of each limited liability company as set forth in its certificate of formation:

(a) Shall contain the words "limited liability company" or the abbreviation "L.L.C." or similar abbreviation; and

(b) May contain the name of a member or manager.

II. A limited liability company name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 304-C:7 and its certificate of formation.

III. Except as authorized by paragraphs IV and V, a limited liability company name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(f) The name "farmers' market" unless the entity meets the definition of "farmers' market" established in RSA 21:34-a, V.

IV. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in paragraph III, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph III gives written consent to use the name that is not distinguishable from, or likely to be confused with or mistaken for the name of the applying limited liability company; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying limited liability company; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

V. A limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user limited liability company:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

VI. This chapter does not control the use of fictitious names.

VII. Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic limited liability company under the same name as the trade name.

§ 304-C:4. Reservation of Name

I. The exclusive right to the use of a name may be reserved by:

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

(b) Any domestic limited liability company or any foreign limited liability company registered in New Hampshire which, in either case, proposes to change its name to that name;

(c) Any foreign limited liability company intending to register in New Hampshire and adopt that name; or

(d) Any person intending to organize a foreign limited liability company and intending to have it register in New Hampshire and adopt that name.

II. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing with

the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the secretary of state a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

§ 304-C:5. Registered Office; Registered Agent

I. Each limited liability company shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business; and
- (b) A registered agent, which agent may be:

- (1) An individual who resides in this state and whose business office is identical with the registered office; or

- (2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

- (3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

- (4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

II. A limited liability company may change its registered office or registered agent, or both, by filing with the secretary of state a statement setting forth:

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

- (b) The street address of its current registered office;

- (c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;

- (d) The name and address of its current registered agent;

- (e) If its registered agent is to be changed, the name and address of its successor registered agent; and

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

III. A registered agent of a limited liability company may resign as registered agent by executing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its principal office. The appointment of the registered agent terminates 31 days after filing of the notice with the secretary of state or on the appointment of a successor registered agent, whichever occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

IV. If a registered agent changes its address to another place in this state, it may change the address of the registered office of any limited liability company for which it is a registered agent by filing a statement with the secretary of state as required by RSA 304-C:5, II, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

§ 304-C:6. Service of Process on Domestic Limited Liability Companies

I. A limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

II. If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this section at the earliest of:

(a) The date the limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

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

III. This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

§ 304-C:7. Nature of Business Permitted; Powers

I. A limited liability company may be organized under this chapter for any lawful purpose except carrying on the business of banking, the construction and maintenance of railroads, the business of making contracts for the payment of money at a fixed date or upon the happening of some contingency, or the business of a trust, surety, indemnity or safe deposit company. If, however, the commissioner of the department of transportation enters an order finding that it shall be in the public good and subject to such terms and conditions as he may prescribe in the public interest, a limited liability company may be formed pursuant to this chapter to acquire, maintain, and operate any existing line or

railroad or street railway within this state.

II. Except as provided in a limited liability company agreement, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

(a) To sue and be sued, complain and defend in its name.

(b) To have a seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

(c) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

(d) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

(e) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in or with shares or other interests in, or obligations of, any other entity.

(f) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the limited liability company), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

(g) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

(h) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

(i) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(j) To appoint employees and agents, define their duties, fix their compensation, and lend them money and credit.

(k) To pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former managers, employees, and agents.

(l) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(m) To transact any lawful business that will aid governmental policy.

(n) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

III. No act of a limited liability company and no conveyance or transfer of real or personal property to or by a limited liability company shall be invalid because the limited liability company was without capacity or power to do the act or to make or receive the conveyance or transfer, but the lack of capacity or power may be asserted:

(a) In a proceeding by a member against a limited liability company to enjoin the doing of any act or the transfer of real or personal property by or to the limited liability company. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the limited liability company is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the limited liability company or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the limited liability company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former managers or members of the limited liability company.

(c) In a proceeding by the attorney general, as provided in this chapter to dissolve the limited liability company, or in a proceeding by the attorney general to enjoin the limited liability company from the transaction of unauthorized business.

§ 304-C:8. Business Transactions of Member or Manager With the Limited Liability Company

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guaranty or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

§ 304-C:9. Indemnification

I. Except as provided in paragraph II and subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify any member or manager or other

person made a party to a proceeding or threatened to be made a named defendant or respondent in a proceeding because such member, manager, or other person acted on behalf of the limited liability company, against liability for a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding, if:

(a) The member, manager or person conducted himself in good faith; and

(b) The member, manager, or person reasonably believed his conduct was not opposed to the best interest of the limited liability company.

II. A limited liability company may not indemnify a member, manager, or other person under this section:

(a) In connection with a proceeding by or in the right of the limited liability company in which such person was judged liable to the limited liability company; or

(b) In connection with any other proceeding charging improper personal benefit to such person, whether or not involving action on behalf of the limited liability company, in which such person was adjudged liable on the basis that personal benefit was improperly received by him.

§ 304-C:10. Service of Process on Managers and Liquidating Trustees

I. A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in New Hampshire involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company, or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company, or, if there is none, the secretary of state, as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within New Hampshire, and such appointment of the registered agent, or, if there is none, the secretary of state, shall be irrevocable.

II. Service of process under this section may be effected in the manner provided in RSA 304-C:6.

III. In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, New Hampshire, and to be served with legal process in the

same manner prescribed in such limited liability company agreement or other writing.

IV. This section does not prescribe the only means, or necessarily the required means, of serving managers and liquidating trustees of limited liability companies.

§ 304-C:11. Effective Time and Date of Document

I. Except as provided in paragraph II, a document accepted for filing is effective:

(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(b) At the time specified in the document as its effective time on the date it is filed; or

(c) Upon the date and time of acceptance by the secretary of state corporate database and application, if filed electronically.

II. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

FORMATION; CERTIFICATE OF FORMATION

§ 304-C:12. Certificate of Formation

I. In order to form a limited liability company, one or more authorized persons shall deliver a certificate of formation and the certificate required by RSA 421-B:13, I-a to the secretary of state for filing.

II. The certificate of formation shall set forth:

(a) The name of the limited liability company;

(b) The nature of the primary business or purposes of the limited liability company;

(c) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by RSA 304-C:5;

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

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

(f) Any other matters the members decide to include.

III. A limited liability company is formed at the time of the filing of the initial certificate of formation with the secretary of state.

IV. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

§ 304-C:13. Amendment to Certificate of Formation

I. A certificate of formation is amended by filing a certificate of amendment with the secretary of state. The certificate of amendment shall set forth:

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

(b) The amendment to the certificate of formation.

II. A certificate of formation may be amended at any time in any respect so long as the certificate of formation as amended contains only provisions that lawfully may be contained in the certificate of formation at the time of making the amendment.

§ 304-C:14. Execution, Amendment or Cancellation by Judicial Order

I. If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate or enter an order granting other appropriate relief.

II. If a person required to execute a limited liability company agreement or amendment of such an agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the limited liability company agreement or amendment of such agreement. If the court finds that the limited liability company agreement or amendment of such an agreement should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall order such person to execute such agreement or amendment or enter an order granting other appropriate relief.

§ 304-C:15. Filing

I. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all required filing fees the secretary shall:

(a) Certify that the certificate of formation, amendment, or cancellation, any judicial decree of amendment or cancellation, the certificate of merger, or the restated certificate has been filed by endorsing upon the original certificate the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File the endorsed certificate; and

(c) Prepare and return to the person who filed it, or such person's representative, a copy of the original signed instrument, similarly endorsed.

II. Upon the filing of a certificate of amendment, or judicial decree of amendment, or restated certificate with the secretary of state, or upon the future effective date or time of a certificate of amendment, or judicial decree of amendment, or restated certificate, the certificate of formation shall be amended or restated as set forth. Upon the filing of a certificate of cancellation, or a judicial decree thereof, or a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation or a judicial decree thereof, or of a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, the certificate of formation is cancelled.

§ 304-C:16. Notice

The fact that a certificate of formation is on file with the secretary of state is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company legally formed under the laws of New Hampshire and is notice of all other facts set forth in the certificate which are required to be set forth by RSA 304-C:12, II(a), (b) and (c).

§ 304-C:17. Restated Certificate

I. A certificate of formation may be restated at any time by filing a restated certificate of formation with the secretary of state. The restated certificate of formation may contain one or more amendments of the certificate of formation as permitted in a certificate of amendment under RSA 304-C:13.

II. The restated certificate of formation shall state the name of the limited liability company and the text of the restated certificate of formation together with a statement whether the restatement contains new amendments of the certificate of formation.

III. Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided in the certificate, the initial certificate of formation, as amended or supplemented, shall be

superseded. The restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

MERGER AND CONVERSION

§ 304-C:17-a. Conversion of Other Business Entities to Limited Liability Companies

I. Any business entity may convert to a limited liability company by complying with the requirements of this section.

II. Each business entity that proposes to convert to a limited liability company shall approve a plan of conversion in the manner and by the vote required by the laws applicable to such business entity.

III. A plan of conversion shall set forth the terms and conditions of the conversion of the shares of stock of a corporation, the partnership interests of a partnership or a limited partnership or other equity interests in the converting business entity, as the case may be, into interests in the limited liability company or cash or other consideration to be paid or delivered as a result of the conversion.

IV. A business entity converting to a limited liability company shall file with the secretary of state:

(a) A certificate of conversion to a limited liability company;

(b) A certificate of formation that complies with the requirements of RSA 304-C:12; and

(c) The certificate required by RSA 421-B:11, II.

V. The certificate of conversion to a limited liability company shall state:

(a) The date on which and jurisdiction where the business entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a limited liability company.

(b) The name of the business entity immediately prior to the filing of the certificate of conversion to a limited liability company.

(c) The name of the limited liability company as set forth in its certificate of formation filed in accordance with paragraph IV of this section.

(d) If the business entity is a corporation:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group is sufficient for approval by that voting group.

(e) That the plan of conversion is on file at the principal place of business of the limited liability company and the address thereof and that a copy of the plan of conversion will be furnished by the limited liability company, on request and without cost, to any shareholder of the corporation.

VI. A conversion of a business entity to a limited liability company takes effect upon the effective date and time of the certificate of formation.

VII. Upon the effective date of the conversion the converting business entity shall be converted into a limited liability company, and the limited liability company shall thereafter be subject to all of the provisions of this chapter.

VIII. A conversion of a business entity to a limited liability company has the following effects:

(a) The limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of the business entity that converted into the limited liability company and shall be subject to all the restrictions, disabilities, and duties of such business entity to the extent that such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to a limited liability company.

(b) All property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to such business entity shall be vested in the limited liability company without further act or deed.

(c) The title to all real estate and other interests therein vested in the business entity converting into the limited liability company shall not revert or be in any way impaired by reason of such conversion.

(d) The limited liability company shall thenceforth be liable for all liabilities and obligations of the business entity converting to the limited liability company and any claim existing or action or proceeding pending by or against such business entity may be prosecuted as if such conversion had not taken place, or the limited liability company may be substituted in the action.

(e) Neither the rights of creditors nor any liens on the property of the business entity converted to a limited liability company shall be impaired by the conversion.

(f) The interests or shares of the business entity that is converted into a limited liability company that are to be converted or exchanged into interests of the limited liability company under the terms of the plan of conversion are so converted, and the former holders thereof are entitled only to the interests in the limited liability company as provided in the plan of conversion or the rights otherwise provided by law.

(g) The conversion shall not be deemed to affect any obligations or liabilities of the converting business entity incurred before its conversion to a limited liability company.

IX. Unless otherwise agreed or as required under applicable law, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting business entity.

§ 304-C:17-b. Approval of Conversion of a Limited Liability Company

I. A limited liability company may convert to another business entity authorized by applicable statute to be formed by conversion of a limited liability company, upon the authorization of such conversion in accordance with this section and fulfillment of the requirements for conversion of the statute governing conversion into such other entity.

II. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger that involves the limited liability company as a constituent party to the merger.

III. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by more than 1/2 by number of the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by a more than 1/2 by number of the members in each class or group, as appropriate.

§ 304-C:18. Merger

I. Unless otherwise provided in writing in a limited liability company agreement, and subject to any law applicable to business entities other than limited liability companies,

one or more limited liability companies may merge with or into one or more other business entities authorized by applicable statute to merge with a limited liability company, with the limited liability company or other business entity, as the merger agreement shall provide, being the surviving limited liability company or other business entity.

II. Rights or securities of or interests in a business entity that is a party to the merger may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving business entity or of any other business entity.

III. [Repealed.]

§ 304-C:19. Approval of Merger

I. Unless otherwise provided in a limited liability company agreement, a limited liability company that is a party to a proposed merger shall approve the merger agreement by the consent of more than 1/2 by number of the members, or if there is more than one class or group of members, then by the consent of more than 1/2 by number of the members of each class or group of members.

II. Each corporation, general partnership, limited partnership and foreign limited liability company that is a party to a proposed merger to be made pursuant to RSA 304-C:18 shall approve the merger in the manner and by the vote required by the laws applicable to such business entity.

III. Each business entity that is a party to the merger shall have such rights to abandon the merger as are provided for in the merger agreement or in the laws applicable to the business entity.

§ 304-C:20. Agreement of Merger

I. Each business entity that is a party to the merger shall enter into a written agreement of merger, which shall be approved in accordance with RSA 304-C:19.

II. The agreement of merger shall set forth:

(a) The name of each business entity that is a party to the merger and the name of the surviving business entity into which each other business entity merges;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the interests in each limited liability company and the shares of stock or other interests in each corporation, general partnership or limited partnership that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving business entity, or of

any other business entity, or, in whole or in part, into cash or other property;

(d) Such amendments to the certificate of formation of a limited liability company, or articles of incorporation of a corporation, or certificate of limited partnership of a limited partnership or the partnership agreement of a general partnership or a limited partnership, as the case may be, of the surviving business entity that are to be effected by the merger, or that no such changes are to be effected; and

(e) Such other provisions relating to the merger as are deemed necessary or desirable.

III. An agreement of merger approved in accordance with RSA 304-C:19 may effect any amendment to a limited liability company agreement for a limited liability company if it is the surviving limited liability company in the merger. An approved agreement of merger may also provide that the limited liability company agreement of any constituent limited liability company to the merger (including a limited liability company formed for the purpose of consummating a merger) shall be the limited liability company agreement of the surviving limited liability company. Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to this paragraph shall be effective at the effective time or date of the merger. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law.

§ 304-C:21. Certificate of Merger

I. The business entity surviving from the merger shall deliver to the secretary of state a certificate of merger executed by each constituent entity setting forth:

(a) The name and jurisdiction of formation or organization of each business entity which is to merge;

(b) That an agreement of merger has been approved and executed by each business entity which is a party to the merger;

(c) The name of the surviving business entity;

(d) To the extent permitted by RSA 304-C:11 the future effective date and time of the merger (which shall be a date or time certain) if it is not to be effective at the close of business on the date of filing of the certificate of merger;

(e) That the agreement of merger is on file at a place of business of the surviving business entity, and the address of that place of business;

(f) That a copy of the agreement of merger will be furnished by the surviving business entity, on request and without cost, to any person holding an interest in any

business entity which is to merge; and

(g) If the surviving entity is not a business entity organized under the laws of this state, a statement that such surviving business entity:

(1) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any business entity party to the merger that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and

(2) Appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving business entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

II. A merger takes effect upon the later of the effective date of the filing of the certificate of merger or the date set forth in the certificate of merger.

III. The certificate of merger shall be executed by a limited liability company that is a party to the merger in the manner provided for in RSA 304-C:2 and shall be filed with the secretary of state in the manner provided for in RSA 304-C:2.

IV. A certificate of merger shall constitute a certificate of cancellation for a limited liability company which is not the surviving business entity in the merger.

§ 304-C:22. Effects of Merger

A merger has the following effects:

I. The business entities that are parties to the merger agreement shall be a single entity, which shall be the entity designated in the plan of merger as the surviving entity;

II. Each party to the merger agreement, except the surviving entity, shall cease to exist;

III. The surviving entity shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of each constituent entity and shall be subject to all the 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 type of business entity that is the surviving entity;

IV. All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity without further act or deed;

V. The title to all real estate and any interest therein, vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger;

VI. The surviving entity shall thenceforth be liable for all liabilities and obligations of each of the constituent entities so merged, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger had not taken place, or the surviving entity may be substituted in the action;

VII. Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger; and

VIII. The interests in a limited liability company or shares or other interests in a corporation, general partnership or limited partnership that are to be converted or exchanged into interests, shares or other securities, cash, obligations or other property under the terms of the merger agreement are so converted, and the former holders thereof are entitled only to the rights provided in the merger agreement or the rights otherwise provided by law.

DISSENTERS' RIGHTS

§ 304-C:22-a. Definitions and Construction

In this subdivision:

I. "Dissenter" means a member who is entitled to dissent from limited liability company action under RSA 304-C:22-b and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's limited liability interest of a limited liability company immediately before the effective date of the limited liability action referred to in RSA 304-C:22-b, excluding any appreciation or depreciation in anticipation of the limited liability action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304-C:22-b that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

IV. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under RSA 304-C:22-b, and includes any successor by merger or conversion.

V. "Member" includes a former member who has ceased to be a member, but who was not entitled to payment for the value of the member's limited liability interest upon cessation of membership.

§ 304-C:22-b. Dissenters' Rights

I. A member of a limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's limited liability company interest, upon any of the following actions:

(a) Consummation of a plan of merger to which the limited liability company is a party.

(b) Consummation of a plan of conversion of the limited liability company to some other business entity.

(c) An amendment to the limited liability company agreement (1) altering or abolishing a right in respect of distribution, (2) altering or abolishing a right to voluntarily withdraw, or (3) altering or abolishing any right of a member to vote on any matter, other than alteration by dilution through the admission of other members or acceptance of contributions.

II. A member entitled to dissent and obtain payment for such member's limited liability company interest under this subdivision may not challenge the limited liability company action creating such member's entitlement unless the action is unlawful or fraudulent with respect to the member or the limited liability company.

§ 304-C:22-c Notice of Dissenters' Rights

I. If the proposed action of the limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

II. If the limited liability company action creating dissenters' rights under RSA 304-C:22-b is taken without a vote of the members, the limited liability company shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-C:22-e.

III. A limited liability company's failure to give notice pursuant to this section shall not invalidate the limited liability company action.

§ 304-C:22-d. Notice of Intent to Demand Payment

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, a member who wishes to assert dissenters' rights shall:

(a) Deliver to the limited liability company before the vote is taken a written notice of the member's intent to demand payment for the member's limited liability company interest if the proposed action is effectuated.

(b) Not vote the member's limited liability company interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any member to whom the limited liability company has failed to provide the notice required by RSA 304-C:22-c.

III. A member who does not satisfy the requirements of this section is not entitled to payment for such member's limited liability company interest under this subdivision.

§ 304-C:22-e. Dissenters' Notice

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304-C:22-b is authorized at a meeting of the members, the limited liability company shall deliver a written dissenters' notice to all members who have satisfied the requirements of RSA 304-C:22-d.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited liability company was authorized by the members or effectuated, whichever is the first to occur, and shall:

(a) State where the payment demand shall be sent;

(b) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action and requires that the person asserting dissenters' rights certify whether or not the member acquired limited liability company interest before that date;

(c) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph II is sent; and

(d) Be accompanied by a copy of this subdivision if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304-C:22-c.

§ 304-C:22-f. Duty to Demand Payment

I. A member sent a dissenters' notice described in RSA 304-C:22-e must demand payment and certify whether the member acquired the limited liability company interest before the date required to be set forth in the dissenters' notice pursuant to RSA 304-

C:22-e.

II. A member who demands payment under paragraph I retains all of the rights of a member until those rights are canceled or modified by consummation of the proposed action of the limited liability company.

III. A member who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such member's membership interest under this subdivision.

IV. A demand for payment filed by a member may not be withdrawn unless the limited liability company with which it was filed or the surviving limited liability company or other business entity consents to such withdrawal.

§ 304-C:22-g. Payment

I. Except as provided in RSA 304-C:22-i, as soon as the proposed limited liability company action is effectuated, or upon receipt of a payment demand, whichever is later, the limited liability company shall pay each dissenter who complied with RSA 304-C:22-f the amount the limited liability company estimates to be the fair value of such dissenter's membership interest, plus accrued interest.

II. The payment must be accompanied by:

(a) The limited liability company's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(b) A statement of the limited liability company's estimate of the fair value of the membership interest;

(c) An explanation of how the value of the membership interest was calculated;

(d) A statement of the dissenter's right to demand payment under RSA 304-C:22-j; and

(e) A copy of this subdivision, if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304-C:22-c or RSA 304-C:22-e.

§ 304-C:22-h. Failure to Take Action

If the limited liability company does not effectuate the proposed action that gave rise to the dissenters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-C:22-c and repeat the payment demand procedure if it effectuates the proposed action.

§ 304-C:22-i. After-Acquired Limited Liability Company Interests

I. A limited liability company may elect to withhold payment required by RSA 304-C:22-g from a dissenter unless the dissenter was a member before the date set forth in the dissenters' notice as the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action.

II. To the extent the limited liability company elects not to withhold payment under paragraph I, after effectuating the proposed limited liability company action, it shall estimate the fair value of the limited liability company interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The limited liability company shall send with its offer a statement of its estimate of the fair value of the limited liability company interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 304-C:22-j.

§ 304-C:22-j. Procedure if Member Dissatisfied With Payment or Offer

I. A dissenter may notify the limited liability company in writing of the dissenter's own estimate of the fair value of such dissenter's limited liability company interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under RSA 304-C:22-g), or reject the limited liability company's offer under RSA 304-C:22-i and demand payment of the fair value of the limited liability company interest and interest due, if:

(a) The dissenter believes that the amount paid under RSA 304-C:22-g or offered under RSA 304-C:22-i is less than the fair value of such dissenter's limited liability company interest or that the interest due is incorrectly calculated; or

(b) The limited liability company fails to make payment under RSA 304-C:22-g within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of such dissenter's demand in writing under paragraph I within 30 days after the limited liability company made or offered payment for such dissenter's limited liability company interest.

§ 304-C:22-k. Court Action

I. If a demand for payment under RSA 304-C:22-j remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the limited liability company interest and accrued interest. If the limited liability company does not commence the proceeding within the 60-day period, it shall pay each dissenter whose

demand remains unsettled the amount demanded.

II. The limited liability company shall commence the proceeding in superior court of the county where the limited liability company's principal executive office (or, if none in this state, its registered office) is located. If the limited liability company is a foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged or converted into with the foreign limited liability company was located.

III. The limited liability company shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their limited liability company interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

IV. The jurisdiction of the court in which the proceeding is commenced under paragraph II is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

V. Each dissenter made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's membership interest plus accrued interest exceeds the amount paid by the limited liability company; or

(b) For the fair value, plus accrued interest, of such dissenter's after-acquired membership interest for which the limited liability company elected to withhold payment under RSA 304-C:22-i.

VI. The limited liability company is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership interest, plus accrued interest, is less than the amount paid by the limited liability company to each dissenter.

§ 304-C:22-l. Court Costs and Counsel Fees

I. The court in an appraisal proceeding commenced under RSA 304-C:22-k shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 304-

C:22-j.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of RSA 304-C:22-b through RSA 304-C:22-j.

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amount awarded to the dissenters who were benefited.

§ 304-C:22-m. Procedures as to Assignees of Financial Rights

I. When an assignment of all or a portion of limited liability company interest is in effect and a copy is delivered to the limited liability company prior to the action described in RSA 304-C:22-g, then as to that limited liability company interest the provisions of RSA 304-C:22-a through RSA 304-C:22-l must be followed subject to the requirements of this section.

II. If the member has not ceased to be a member pursuant to RSA 304-C:46, II(b) prior to the action described in RSA 304-C:22-g, all rights to be exercised and actions to be taken by a member under RSA 304-C:22-b through RSA 304-C:22-l shall be taken by the member and not by an assignee of the member's limited liability company interest. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-C:22-g, the limited liability company shall forward to the dissenter member:

(1) The materials described in RSA 304-C:22-g, II;

(2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of the limited liability company interest according to the terms in of the assignment reflected in the required records; and

(3) A statement of that allocation.

(b) If the dissenter member accepts the amount of the offer made under subparagraph (a) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation. The member shall commence the proceeding in superior court of the county in which the principal office of the limited liability company (or if none, its registered office) is located, or in the case of a surviving foreign limited liability company or other entity that is complying with this section following a merger with or conversion of a limited liability company, the member shall commence the proceeding in superior court of the county in this state in which the last registered office of the limited liability company was located. The petition shall name as parties the member, the limited liability company and all assignees of the member's limited liability interest. Upon being served with the petition, the limited liability company shall promptly pay into the court the amount offered under paragraph II and shall then be dismissed from the proceeding.

(c) If the dissenter considers the amount offered under subparagraph (a) inadequate, the dissenter may decline the offer and demand payment under RSA 304-C:22-j. If the dissenter makes demand for payment, RSA 304-C:22-k and RSA 304-C:22-l apply with the court having jurisdiction also to determine the correctness of the allocation.

(d) If the member fails to act under either subparagraph (b) or (c), then:

(1) As to the limited liability company, both the member and the assignees of the member's limited liability company interests are limited to the amount and allocation offered under subparagraph (a); and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subparagraph (a).

III. If the member has ceased to be a member upon assignment of his limited liability company interest pursuant to RSA 304-C:46, II(b), the assignees of the member's limited liability company interest shall be entitled to exercise all rights of the member pursuant to RSA 304-C:22-b through RSA 304-C:22-l.

MEMBERS AND MANAGERS

§ 304-C:23. Admission of Members

I. In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

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

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

II. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

(b) In the case of an assignee of a limited liability company interest, as provided in RSA 304-C:46, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or

(c) In the case of an assignee of a single-member limited liability company interest, upon such assignee's succeeding to the assignor's limited liability company interest under RSA 304-C:48, I(c), without further action.

III. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

§ 304-C:24. Classes, Meetings, and Voting of Members

I. A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

II. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

III. A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

IV. A limited liability company agreement that grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

V. Unless otherwise provided in a limited liability company agreement or this chapter, and subject to paragraph VI, the affirmative vote, approval or consent of more than 1/2 by number of the members, if management of the limited liability company is vested in the members, shall be required to decide any matter connected with the business of the limited liability company.

VI. Unless otherwise provided in a limited liability company agreement, the affirmative vote, approval or consent of all members shall be required to:

(a) Amend a limited liability company agreement; or

(b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a limited liability company agreement, including any provision that expressly limits the purpose, business or affairs of the limited liability company or the conduct of such limited liability company.

VII. Unless otherwise provided by law or in a limited liability company agreement or certificate of formation, no meeting is required for any decision or action of members or managers of a limited liability company.

VIII. For a limited liability company in which management is vested in fewer than all the members, there shall be, within 30 days of a written demand by any member, a meeting of the members to consider the affairs of the limited liability company, and to take any action permitted to be taken by the members by law, the limited liability company agreement, or the certificate of formation, unless there has been such a meeting within 240 days prior to delivery of the demand.

(a) The meeting may be held in person or wholly or partly by any substantially simultaneous means or telecommunications or by unanimous written waiver or consent of the members.

(b) Members may participate in person or by proxy.

(c) Unless otherwise provided in the limited liability company agreement or certificate of formation, any means of notice reasonably calculated to give the members an opportunity to participate shall be sufficient.

(d) A quorum for the meeting shall be one more than 1/2 by number of all members unless a higher number is provided in the limited liability company agreement or certificate of formation.

(e) In addition to any other business that may come before the meeting, the persons having management of the limited liability company shall report on the affairs of the company and shall either make available in writing the information listed in RSA 304-C:28, I(a)-(e) or be prepared to respond promptly in writing to demands for information pursuant to RSA 304-C:28.

§ 304-C:25. Liability to Third Parties

Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

§ 304-C:26. Agency Power of Members and Managers

I. Except as provided in paragraph II, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

II. If the limited liability company agreement provides that management of the limited liability company is vested in a manager or managers:

(a) No member, solely by reason of being a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting, in fact, has no authority to act for the limited liability company in the particular matter, and the person with whom the

manager is dealing has knowledge of the fact that the manager has no such authority.

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

IV. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

§ 304-C:27. Events of Dissociation

I. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in paragraph III.

(b) The member is removed as a member, if the limited liability company agreement neither provides for nor restricts removal of members, in accordance with RSA 304-C:27, IV.

(c) The member is removed as a member, in accordance with a limited liability company agreement.

(d) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, the member:

(1) Makes an assignment for the benefit of creditors;

(2) Files a voluntary petition in bankruptcy;

(3) Is adjudicated a bankrupt or insolvent;

(4) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

(6) 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 the member's properties;

(7) If within 120 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

(8) If within 120 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 properties, the appointment is not vacated or stayed or if within 120 days after the expiration of any stay, the appointment is not vacated.

(e) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, in the case of a member who is an individual:

(1) The member's death; or

(2) Except in the case of a single-member limited liability company, the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

(f) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time:

(1) In the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(2) In the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.

(3) In the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the administrative or judicial dissolution of the corporation and the lapse of 90 days after notice to the corporation of such dissolution without reinstatement.

(4) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(g) Unless otherwise provided in an agreement or by the written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.

(h) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the administrative or judicial dissolution of the corporation and the lapse of 90 days after

notice to the corporation of such dissolution without reinstatement.

(i) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

II. The members may provide in a limited liability company agreement for other events, the occurrence of which shall result in a person ceasing to be a member of the limited liability company.

III. Unless a limited liability company agreement provides that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving 30 days' written notice to the other members, or such other notice as is provided for in writing in the limited liability company agreement. If the member has the power to withdraw but the withdrawal is a breach of the limited liability company agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the limited liability company agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of any services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in the limited liability company agreement or otherwise available under applicable law. Unless otherwise provided in the limited liability company agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term, other than a withdrawal pursuant to RSA 304-C:41, II, is a breach of the limited liability company agreement.

IV. If a limited liability company agreement neither provides for nor restricts removal of members, a member or personal representative exercising powers of a member under RSA 304-C:49 may be removed for inability or unwillingness to exercise management responsibilities, actions beyond authority or contrary to the limited liability company agreement, or fraudulent or illegal actions in relation to the business and affairs of the company:

(a) By a vote of no less than 2/3 by number of the other members acting reasonably and in good faith.

(b) By a court of competent jurisdiction on petition of at least 2 members, or, in the case of a limited liability company with only 2 members, one of the members.

§ 304-C:28. Access to and Confidentiality of Information; Records

I. Each member of a limited liability company has the right to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(a) True and full information regarding the status of the business and financial condition of the limited liability company as may be set forth in information required to be documented or filed by law;

(b) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing address of each member and manager;

(d) A copy of the limited liability company agreement and the certificate of formation and all amendments, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments have been executed;

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(f) Other information regarding the affairs of the limited liability company as is just and reasonable.

II. Each manager shall have the right to examine all of the information described in paragraph I for a purpose reasonably related to his position as a manager.

III. The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

IV. A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

V. Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

VI. Access to information and records provided by this section may be conditioned upon and provided subject to such reasonable standards as may be set forth in a limited liability company agreement or otherwise established by a manager or, if there is no manager, the members, as to:

- (a) The location of the documents;
- (b) The time and days of the week during which the information will be available;
- (c) If the records are not those maintained in the ordinary course of business, the expense of providing the information requested.

VII. Any action to enforce any right arising under this section shall be brought in the superior court.

§ 304-C:29. Remedies for Breach of Limited Liability Company Agreement by Member

A limited liability company agreement may provide that:

I. A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or consequences; and

II. At the time or upon the occurrence of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

§ 304-C:30. Admission of Managers

A person may be named or designated as a manager of the limited liability company as provided in RSA 304-C:1, IX.

§ 304-C:31. Management of Limited Liability Company

I. A limited liability company agreement may provide for the management, in whole or in part, of a limited liability company by a manager or managers, who shall be chosen by the members in the manner provided in the limited liability company agreement. A manager shall hold the offices and have the responsibilities accorded to him by the members and set forth in a limited liability company agreement. A manager shall cease to be a manager as provided in a limited liability company agreement.

II. In the event there is no provision for managers set forth in the limited liability company agreement, then the management of the limited liability company shall be vested in the members.

III. A person who is both a manager and a member has the rights and powers and is subject to the restrictions and liabilities of a manager, and except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of such person's participation in the

limited liability company as a member.

IV. A member or manager shall be liable, responsible, and accountable in damages or as otherwise provided by law to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company, if such act constitutes gross negligence or willful misconduct.

V. Subject to the liability of a member or manager for acts of gross negligence or willful misconduct provided for in paragraph IV, and unless otherwise provided in the limited liability company agreement:

(a) A member or manager shall not be liable, responsible, or accountable in damages or as otherwise provided by law to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company;

(b) Every member and manager must account to the limited liability company and hold as trustee for it any unfair or unreasonable profit or benefit derived by that person without the consent or ratification of more than 1/2 by number of the disinterested managers and members or other persons participating in the management of the business or affairs of the limited liability company, from:

(1) Transactions connected with the conduct or winding up of the limited liability company;

(2) Any use by the member or manager of the limited liability company's property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the manager or member as a result of such status; or

(3) Any contract, lease, or license between the limited liability company and the member or manager or any entity in which the member or manager has a substantial pecuniary interest; or

(c) A member who is not a manager of a limited liability company in which management is vested in managers shall have no duties to the limited liability company or to the other members solely by reason of acting in the capacity of a member.

VI. Subject to the liability of a member or manager for acts of gross negligence or willful misconduct provided for in RSA 304-C:31, IV, a limited liability company agreement may eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in paragraph V.

§ 304-C:32. Contributions by a Manager

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.

§ 304-C:33. Classes and Voting of Managers

I. A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

II. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

III. A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

IV. A limited liability company agreement that grants to managers a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

V. Unless otherwise provided in a limited liability company agreement or this chapter, the affirmative vote, approval or consent of more than 1/2 by number of the managers, if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business of the limited liability company.

§ 304-C:34. Remedies for Breach of Limited Liability Company Agreement by Manager

A limited liability company agreement may provide that:

I. A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified

penalties or specified consequences; and

II. At the time or upon the occurrence of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or consequences.

§ 304-C:35. Reliance on Reports and Information by Member or Manager

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

FINANCE

§ 304-C:36. Form of Contribution

I. The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

II. At the time of admission of any member whose contribution is or will be in any form other than money, or who is admitted to membership without contribution, or when a present member makes an additional contribution in any form other than money, the persons having management of the limited liability company shall state in dollars a value for the contribution or that there was no contribution, and thereafter, in the absence of fraud, such determination is conclusive as to the value of the contribution or the fact that there was no contribution.

§ 304-C:37. Liability for Contribution

I. A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing signed by the member.

II. Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value of the contribution that has not

been made. Such 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 may have against such member under the limited liability company agreement or applicable law.

III. Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter shall be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, or otherwise acts, in reliance on that obligation after the member signs a writing that reflects the obligation and before the compromise may enforce the original obligation.

IV. A limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his limited liability company interest to that of nondefaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence.

§ 304-C:38. Allocation of Profits and Losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the value, as of the date of contribution, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

§ 304-C:39. Allocation of Distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the value, as of the date of contribution, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

DISTRIBUTIONS

§ 304-C:40. Interim Distributions

Except as provided in this subdivision, to the extent and at the times or upon the occurrence of the events specified in the limited liability company agreement, a member is entitled to receive from a limited liability company distributions before cessation of the member's membership pursuant to RSA 304-C:27 and before the dissolution and winding up of the limited liability company.

§ 304-C:41. Distribution Upon Cessation of Membership or Merger

Except as provided in this subdivision, any member, upon ceasing to be a member pursuant to RSA 304-C:27, is entitled to receive any distribution to which the member is entitled under a limited liability company agreement, but, unless otherwise provided in a limited liability company agreement, the member is not entitled to receive any payment for the value of the member's limited liability company interest as of the date of cessation of membership based upon the member's right to share in distributions from the limited liability company. If the member ceasing to be a member receives no payment for the value of the member's interest in the limited liability company, the member ceasing to be a member shall continue to have the rights of an assignee of a limited liability company interest under RSA 304-C:46, II, subject to the limited liability company's right of offset under RSA 304-C:27, III.

§ 304-C:42. Distribution in Kind

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's 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 a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

§ 304-C:43. Right to Distribution

Subject to RSA 304-C:44 and RSA 304-C:58, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

§ 304-C:44. Limitations on Distribution

I. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to

specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

II. A member who receives a distribution in violation of paragraph I, and who knew at the time of the distribution that the distribution violated paragraph I, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of paragraph I, and who did not know at the time of the distribution that the distribution violated paragraph I, shall not be liable for the amount of the distribution.

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

§ 304-C:45. Nature of Limited Liability Company Interest

A limited liability company interest is intangible personal property. A member has no interest in limited liability company property. Rights and interests of members, other than their limited liability company interests, are personal and non-transferable except to the extent that a transferee may succeed to such rights and interests in conformity with RSA 304-C:46-49.

§ 304-C:46. Assignment of Limited Liability Company Interest

I. A limited liability company interest is assignable in whole or in part, except as provided in a limited liability company agreement. Except as otherwise provided in paragraphs I and II, or as provided in RSA 304-C:48 and RSA 304-C:49, the assignee of a member's limited liability company interest shall not be entitled to participate in the management and affairs of a limited liability company, or to exercise any rights or powers of a member. However, an assignee of a member's limited liability company interest may exercise the rights and powers of a member either:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or

(b) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement.

II. Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

III. A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

IV. Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

V. "Assign" or "assignment" includes a transfer by gift, bequest, devise, or descent and distribution.

§ 304-C:47. Rights of Judgment Creditor

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

§ 304-C:48. Right of Assignee to Become Member

I. An assignee of a limited liability company interest shall become a member:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning the limited liability company interest;

(b) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement;
or

(c) In the case of a single-member limited liability company only, upon a person succeeding to such interest of the member.

II. 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 a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless

otherwise provided in a limited liability company agreement:

(a) An assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in RSA 304-C:37; and

(b) An assignee who becomes a member shall not be liable for the obligations of the assignor under RSA 304-C:40-44, or for the assignor's liabilities to the limited liability company or others for the breach of duty to it or them. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in RSA 304-C:37, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

III. Whether or not an assignee of a limited liability company interest becomes a member, and except to the extent otherwise provided in the limited liability company agreement, the assignor is not released from the liabilities and obligations referred to in paragraph II.

§ 304-C:49. Powers of Estate of Deceased or Incompetent Member

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage such member's person or property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property. Such member's rights shall be exercised in accordance with the limited liability company agreement and shall include any power under the limited liability company agreement, or this chapter, of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purposes of winding up its affairs, unless provided otherwise in the limited liability company agreement.

DISSOLUTION

§ 304-C:50. Dissolution

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

I. The occurrence of events specified in a limited liability company agreement;

II. Unless otherwise provided in the limited liability company agreement, the vote or written consent of a majority of the members; or

III. The issuance of a notice of administrative dissolution under RSA 304-C:53, I or entry of a decree of judicial dissolution under RSA 304-C:51.

§ 304-C:51. Judicial Dissolution

On application by or for a member or manager the superior court may decree dissolution of a limited liability company upon the occurrence of one or more of the following:

- I. Procuring the certificate of formation through fraud;
- II. Exceeding or abusing the authority conferred upon the limited liability company by law;
- III. Committing a violation of any provision of law whereby the limited liability company has forfeited its certificate of formation;
- IV. Carrying on, conducting, or transacting its business in a persistently fraudulent or illegal manner;
- V. Abuse of its power contrary to the public policy of the state;
- VI. A deadlock in the management of a limited liability company, the members are unable to break the deadlock, and because of the deadlock either irreparable injury to the limited liability company is threatened or being suffered or its business and affairs can no longer be conducted to its advantage; or
- VII. An event specified as a ground for judicial dissolution in the limited liability company agreement.

The attorney general may apply to the superior court for a decree of dissolution of a limited liability company upon the occurrence of one or more of the grounds stated in RSA 304-C:51, I through V.

§ 304-C:52. Grounds for Administrative Dissolution

The secretary of state may administratively dissolve a limited liability company under RSA 304-C:53 if:

- I. The limited liability company for 2 consecutive years does not pay within 60 days after they are due any annual report fees or penalties imposed by this chapter or other law;
- II. The limited liability company for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;

III. The limited liability company is without a registered agent or registered office in this state for 60 days or more;

IV. The limited liability company does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

V. The limited liability company's period of duration stated in its certificate of formation expires.

§ 304-C:53. Procedure for and Effect of Administrative Dissolution

I. If the secretary of state determines that one or more grounds exist under RSA 304-C:52 for dissolving a limited liability company, the secretary of state shall administratively dissolve the limited liability company by signing and mailing a notice of dissolution to the limited liability company at its principal address that recites the grounds for dissolution and effective date, together with an application for reinstatement.

II. A limited liability company administratively dissolved continues its existence, but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RSA 304-C:56.

III. The administrative dissolution of a limited liability company shall not terminate the authority of its registered agent.

IV. The secretary of state shall not permit any other individual, corporation, limited liability company, or other business entity to assume the same name or a similar name, of a limited liability company administratively dissolved under this section, or any trade name registered by such limited liability company pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such limited liability company.

§ 304-C:54. Reinstatement Following Administrative Dissolution

I. A limited liability company administratively dissolved under RSA 304-C:53 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application shall:

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

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

(c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:3; and

(d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, if such application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

II. If the secretary of state determines that the application contains the information required by subparagraph I(a), that the information is correct, and that the limited liability company name is available for registration, the secretary shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the secretary's determination and the effective date of reinstatement and mail the notice to the limited liability company. If the application for reinstatement included a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company. The notice shall constitute an amendment to the certificate of formation.

III. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

§ 304-C:54-a. Late Reinstatement Hearing; Notice; Requirements

I. A limited liability company administratively dissolved under RSA 304-C:53 may apply to the secretary of state for late reinstatement if more than 3 years have expired since the effective date of dissolution. The application shall:

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

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

(c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:3;

(d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;

(e) Contain a statement asserting that no lawsuits are pending against the limited liability company;

(f) Contain a statement explaining the reason that reinstatement is being requested;

(g) Include all of the annual report fees, for each year since the date of dissolution; and

(h) Contain a statement from the commissioner of the department of employment security showing that to the best of the commissioner's knowledge, as of the date of the statement, such limited liability company has paid all of its contributions or that it was not liable for any contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to the future payment of any contributions.

II. If the secretary of state determines that the application contains the information required by paragraph I, and that the limited liability company name is available for registration, and that it is accompanied by the fee required in RSA 304-C:81, I(d), the secretary of state shall schedule a public hearing on the late reinstatement. The public hearing shall be held before the secretary of state, or designee and the attorney general, or designee. Any interested party shall have the right to testify at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on April 1 and September 1. If any such date falls upon a Saturday, Sunday, or legal holiday, the hearing shall be held on the first business day after each date. An application for late reinstatement must be received at least one month prior to a hearing date in order to be scheduled for that date.

III. Notice of the late reinstatement hearing shall be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or, if none in this state, its registered office, is or was last located. The notice shall:

- (a) Clearly state the reason for the hearing.
- (b) State the date, time, location of the hearing.
- (c) Indicate that all interested parties are encouraged to attend or submit written comments within one week of the hearing.
- (d) Include the mailing address of the secretary of state.

IV. If, after the public hearing, the secretary of state, in conjunction with the attorney general, determines that the information submitted in the application for late reinstatement is correct and that the limited liability company should be reinstated, the secretary of state shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the determination and the effective date of reinstatement and mail said notice to the limited liability company.

V. If the application for reinstatement included a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company and the fee required pursuant to RSA 304-C:81, I(c), and the notice shall constitute an amendment to the certificate of formation. If the application for

reinstatement included a change of the registered agent, the notice shall set forth the name of the new registered agent and the fee required pursuant to RSA 304-C:81, I(b).

VI. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

VII. Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to RSA 421-B:26-a.

§ 304-C:55. Appeal From Denial of Reinstatement

I. If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary shall mail the limited liability company a written notice that explains the reason or reasons for denial.

II. The limited liability company may appeal the denial of reinstatement to the superior court within 30 days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

III. The court may summarily order the secretary of state to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

IV. The court's final decision may be appealed as in other civil proceedings.

§ 304-C:56. Winding Up

Unless otherwise provided in a limited liability company agreement:

I. The business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority pursuant to RSA 304-C:31 to manage the limited liability company prior to dissolution; or

(b) If one or more of such members or managers have engaged in wrongful conduct, or upon other cause shown, by the superior court on application of any member or any member's legal representative or assignee in which case the superior court shall appoint a liquidating trustee.

II. The persons winding up the business or affairs of the limited liability company, in the name of, and for and on behalf of, the limited liability company may:

- (a) Prosecute and defend suits;
- (b) Settle and close the business of the limited liability company;
- (c) Dispose of and transfer the property of the limited liability company;
- (d) Discharge the liabilities of the limited liability company; and
- (e) Distribute to the members any remaining assets of the limited liability company;

All without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

§ 304-C:57. Agency Power of Managers or Members After Dissolution

I. Except as provided in paragraphs III, IV and V, after dissolution of the limited liability company, each of the members having authority to wind up the limited liability company's business and affairs can bind the limited liability company:

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

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

II. The filing of the certificate of cancellation shall be presumed to constitute notice of dissolution for purposes of subparagraph I(b).

III. An act of a member which is not binding on the limited liability company pursuant to paragraph I is binding if it is otherwise authorized by the limited liability company.

IV. An act of a member which would be binding under paragraph I or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

V. If the certificate of formation vests management of the limited liability company in a manager or managers, a manager shall have the authority of a member provided for in paragraph I, and no member shall have such authority if the member is acting solely in the capacity of a member.

§ 304-C:58. Distribution of Assets

I. Prior to making any distributions of assets to any members and managers upon the winding up of a limited liability company, the limited liability company or any person or persons authorized to wind up the limited liability company's affairs shall first obtain a certificate of dissolution from the department of revenue administration in accordance with RSA 77-A:18.

II. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;

(b) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under RSA 304-C:40 or RSA 304-C:41; and

(c) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

§ 304-C:59. Certificate of Cancellation

After the dissolution of the limited liability company pursuant to RSA 304-C:50, the limited liability company shall file a certificate of cancellation with the secretary of state which shall set forth:

I. The name of the limited liability company;

II. The reason for filing the certificate of cancellation;

III. The effective date (which shall be a date certain) of the certificate of cancellation if it is not to be effective upon the filing; and

IV. Any other information the members or managers filing the certificate shall deem proper.

§ 304-C:60. Known Claims Against Dissolved Limited Liability Company

I. Upon dissolution, a limited liability company may dispose of the known claims against it by filing a certificate of cancellation pursuant to RSA 304-C:59 and following the procedures described in this section.

II. The limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than 120 days after the later of the date of the written notice or the filing of the certificate of cancellation pursuant to RSA 304-C:59 by which the limited liability company must receive the claim; and
- (d) State that the claim will be barred if not received by the deadline.

III. A claim against the limited liability company is barred:

- (a) If a claimant who was given written notice under paragraph II does not deliver the claim to the limited liability company by the deadline;
- (b) If a claimant whose claim was rejected by the limited liability company does not commence a proceeding to enforce the claim within 90 days after the date of the rejection notice.

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

§ 304-C:61. Unknown Claims Against Dissolved Limited Liability Company

I. A limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

II. The notice must:

- (a) Be published once in a newspaper of general circulation in the county where the limited liability company’s principal office (or, if none in this state, its registered office) is located;
- (b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within 5 years after the later of the publication of the notice or the filing of the certificate of cancellation.

III. If the limited liability company publishes a newspaper notice in accordance with paragraph II and files a certificate of cancellation pursuant to RSA 304-C:59, the claim of

each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within 5 years after the later of the publication date of the newspaper notice or the filing of the certificate of cancellation:

(a) A claimant who did not receive written notice under RSA 304-C:60;

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

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

IV. A claim may be enforced under this section:

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

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

FOREIGN LIMITED LIABILITY COMPANIES

§ 304-C:62. Law Governing

I. (a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers.

(b) A foreign limited liability company shall not be denied registration by reason of any difference between those laws and the laws of New Hampshire.

II. A foreign limited liability company shall be subject to and have the benefit of RSA 304-C:7.

§ 304-C:63. Transactions Not Constituting Doing Business

I. The following activities of a foreign limited liability company, among others, do not constitute doing business within the meaning of RSA 304-C:64:

(a) Maintaining, defending, or settling any proceeding;

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

(c) Maintaining bank accounts;

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

(e) Selling through independent contractors;

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

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

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

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

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

(k) Transacting business in interstate commerce.

II. The foreign limited liability company shall not be considered to be doing business solely because it:

(a) Owns a controlling interest in a corporation that is doing business;

(b) Is a limited partner of a limited partnership that is doing business; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is doing business.

III. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state, and nothing in this section shall be construed so as to preclude a determination that a foreign limited liability company is carrying on a business activity in this state within the meaning of RSA 77-A:1, XII.

§ 304-C:64. Registration Required; Application

I. Before doing business in New Hampshire, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall file with the secretary of state the certificate required by RSA 421-B:13, I-a and an application for registration as a foreign limited liability company, setting forth:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in New Hampshire;

(b) The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a certificate of existence (or document of similar import) duly authorized by the secretary of state or other official having custody of limited liability company records in the state or country under the law of which it was formed, issued not more than 60 days before the application is received by the secretary of state;

(c) The nature of the business or purposes to be conducted or promoted in New Hampshire;

(d) The address of the registered office and name and address of the registered agent for service of process required to be maintained under RSA 304-C:66, II; and

(e) The name and address of any manager or member executing the application.

II. A person shall not be deemed to be doing business in New Hampshire solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

§ 304-C:65. Issuance of Registration

I. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) Certify that the application has been filed by endorsing upon the original application the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud.

(b) File and index the endorsed application.

II. The copy of the application, similarly endorsed, shall be returned to the person who filed the application or such person's representative.

§ 304-C:66. Name; Registered Office; Registered Agent

I. A foreign limited liability company may register with the secretary of state under its name, provided however:

(a) That the name must be one that could be registered by a domestic limited liability company;

(b) That the name under which a foreign limited liability company is registering must include the words “limited liability company” or the abbreviation “L.L.C.” or similar abbreviation;

(c) That a foreign limited liability company may use a fictitious name under which it may register and transact business in this state if its real name has been determined by the secretary of state to be unavailable;

(d) A foreign limited liability company name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 304-C:7 and its certificate of formation;

(e) Except as authorized by subparagraphs (f) and (g), a foreign limited liability company name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(6) The name “farmers’ market” unless the entity meets the definition of “farmers’ market” established in RSA 21:34-a, V.

(f) A foreign limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (e), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subparagraph (e) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying foreign limited liability company; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying foreign limited liability company; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(g) A foreign limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user foreign limited liability company:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(h) This chapter does not control the use of fictitious names.

(i) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a foreign limited liability company under the same name as the trade name.

II. Each foreign limited liability company shall have and maintain in New Hampshire:

(a) A registered office that may be the same as any of its places of business in New Hampshire.

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

III. A foreign limited liability company registered to transact business in this state may change its registered office or registered agent, or both by delivering to the secretary of state for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and address of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

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

IV. If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign limited liability company for which he is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of paragraph III and recites that the foreign limited liability company has been notified of the change.

V. The registered agent of a foreign limited liability company registered to do business in this state may resign from such position by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

VI. The secretary of state shall mail a copy of the registered agent's statement of resignation to the foreign limited liability company at its principal office address shown in its most recent annual report.

VII. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed or on the appointment of a successor registered agent, whichever occurs first.

§ 304-C:67. Amendments to Application

I. A foreign limited liability company registered to transact business in New Hampshire shall amend its application for registration if it changes:

- (a) Its name; or
- (b) Its state or country of formation.

II. The filing provisions of RSA 304-C:2 shall apply to the amendment of a foreign limited liability company's application for registration.

§ 304-C:68. Cancellation of Registration

I. A foreign limited liability company registered to do business in this state may cancel its registration upon procuring from the secretary of state a certificate of cancellation. In order to procure such certificate, the foreign limited liability company shall deliver to the secretary of state an application for cancellation, which shall set forth:

- (a) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;
- (b) That the foreign limited liability company is not doing business in this state;
- (c) That the foreign limited liability company surrenders its certificate of registration to transact business in this state;
- (d) That the foreign limited liability company revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to do business in this state may thereafter be made on such foreign limited liability company by service thereof upon the secretary of state;
- (e) An address to which a person may mail a copy of any process against the foreign limited liability company; and
- (f) A statement for withdrawal from the department of revenue administration pursuant to RSA 77-A:18, II.

II. The application for cancellation shall be in the form and manner designated by the secretary of state and shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver,

trustee, or other court-appointed fiduciary, by that fiduciary.

III. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

§ 304-C:69. Doing Business Without Registration

I. A foreign limited liability company doing business in New Hampshire may not maintain any action, suit or proceeding in New Hampshire until it has registered in New Hampshire and has paid all fees for the period during which it did business in New Hampshire while unregistered.

II. The failure of a foreign limited liability company to register in New Hampshire does not impair:

(a) The validity of any contract or act of the foreign limited liability company.

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

(c) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of New Hampshire.

III. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in New Hampshire without registration.

IV. A foreign limited liability company which does business in this state without registration shall be liable to the state for the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by this chapter upon that foreign limited liability company had it duly registered, and all penalties imposed by this chapter. The attorney general may bring proceedings to recover all amounts due this state under the provisions of this section.

§ 304-C:70. Service of Process on Registered Foreign Limited Liability Companies

I. A foreign limited liability company's registered agent is the agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

II. If a foreign limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office. Service is perfected under this section at the

earliest of:

- (a) The date the foreign limited liability company receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the foreign limited liability company; or
- (c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

III. This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

§ 304-C:71. Service of Process on Unregistered Foreign Limited Liability Companies

I. Any foreign limited liability company not registered under RSA 304-C:64, doing business in New Hampshire shall be deemed to have appointed and constituted the secretary of state of New Hampshire its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in New Hampshire arising or growing out of any business done by it within New Hampshire. The doing of business in New Hampshire by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within New Hampshire.

II. Whenever the words “doing business,” “the doing of business” or “business done in this state,” by any such foreign limited liability company are used in this section, they shall mean the course of practice of carrying on any business activities in New Hampshire, including, without limiting the generality of the foregoing, the solicitation of business or orders in New Hampshire.

III. Service upon the secretary of state pursuant to paragraph I shall be made in accordance with the provisions of RSA 510:4, II.

§ 304-C:72. Grounds for Revocation

The secretary of state may commence a proceeding under RSA 304-C:73 to revoke the registration of a foreign limited liability company authorized to transact business in this state if:

- I. The foreign limited liability company does not deliver its annual report to the secretary of state within 60 days after it is due;

II. The foreign limited liability company does not pay within 60 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

III. The foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

IV. A member, manager, or agent of the foreign limited liability company signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

V. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having the custody of limited liability company records in the state or country under whose law the foreign limited liability company is formed stating that it has been dissolved or disappeared as the result of a merger.

§ 304-C:73. Procedure for and Effect of Revocation

I. If the secretary of state determines that one or more grounds exist under RSA 304-C:72 for revocation of a registration, the secretary shall send written notice of the secretary's determination under RSA 304-C:72 to the foreign limited liability company.

II. If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after written notice is sent, the secretary of state may revoke the foreign limited liability company's registration by issuing a notice of revocation and mailing the notice of revocation to the foreign limited liability company at its principal office listed on the records of the New Hampshire secretary of state.

III. The authority of a foreign limited liability to transact business in this state ceases on the date shown on the notice of revocation.

IV. Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the limited liability company.

§ 304-C:74. Appeal From Revocation

I. A foreign limited liability company may appeal the secretary of state's revocation of its registration to the superior court within 30 days after service of the notice of revocation is perfected. The foreign limited liability company appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its registration and the secretary of state's certificate of revocation.

II. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate, except that nothing in this section shall be construed to preclude a determination that a foreign

limited liability company is carrying on business activity within this state within the meaning of RSA 77-A:1, XII.

III. The court's final decision may be appealed as in other civil proceedings.

ACTIONS AND DERIVATIVE ACTIONS

§ 304-C:75. Actions by and Against the Limited Liability Company

An action may be brought by or against a limited liability company in its own name.

§ 304-C:76. Right to Bring Action on Behalf of Limited Liability Company

I. A member or members may bring an action in the superior court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed, provided that:

(a) All such plaintiff members are members at the time of bringing such action;

(b) All such plaintiff members are members either:

(1) At the time of the transaction of which the plaintiffs complain; or

(2) The plaintiffs' status as members had devolved on the plaintiffs by operation of law or pursuant to the terms of a limited liability company agreement from persons who were members at the time of the transaction; and

(c) The complaint sets forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

II. Unless otherwise provided in a limited liability company agreement, an action on behalf of the limited liability company may be brought in the name of the limited liability company by:

(a) One or more members of the limited liability company, whether or not a limited liability company agreement vests management of the limited liability company in one or more managers, who are authorized to bring action by the vote of more than 1/2 by number of the members eligible to vote thereon; provided that the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or

(b) One or more managers of the limited liability company, if the limited liability company agreement vests management of the limited liability company in one or more managers, who are authorized to do so by the vote required pursuant to RSA 304-C:24 of

the members eligible to vote thereon, provided that in determining such required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

III. If an action brought pursuant to paragraph I or II is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from the limited liability company.

§ 304-C:77. Effect of Lack of Authority to Bring Action

The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

MISCELLANEOUS

§ 304-C:78. Construction and Application of Chapter and Limited Liability Company Agreement

I. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

II. It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

III. To the extent that, at law or in equity, a member or manager has duties, including fiduciary duties, and liabilities relating to such duties to a limited liability company or to another member or manager:

(a) Any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreements.

(b) Subject to RSA 304-C:31, IV, the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

§ 304-C:79. Cases Not Provided for in This Chapter

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

§ 304-C:80. Annual Report for Secretary of State

I. Each domestic limited liability company and each foreign limited liability company registered to do business in this state, except limited liability companies making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report that sets forth:

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

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

(c) The address of its principal office;

(d) The names and business addresses of its managers or, if there are no managers, at least one member; and

(e) A brief description of the nature of its business.

II. Information in the annual report shall be current as of January 1 of the year the report is due.

III. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic limited liability company was formed or a foreign limited liability company was registered to do business; provided, however, that a foreign limited liability company that has registered at any time between December 1 of the preceding year and April 1, or a domestic limited liability company that was formed during the same period, shall not be required to file an annual report during that year. Subsequent annual reports shall be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

IV. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

§ 304-C:81. Fees

I. No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the secretary of state for deposit in the general fund of the state of New Hampshire:

(a) Upon the receipt for filing of an application for reservation of name or a notice of transfer of reservation pursuant to RSA 304-C:4, a fee in the amount of \$15.

(b) Upon the receipt for filing of a statement under RSA 304-C:5, II, a fee in the amount of \$15; upon the receipt for filing of a statement under RSA 304-C:5, IV, a fee in the amount of \$15.

(c) Upon the receipt for filing of a certificate of formation under RSA 304-C:12, a fee in the amount of \$50; upon the receipt for filing of a certificate of amendment under RSA 304-C:13, a certificate of merger under RSA 304-C:21, a certificate of conversion under RSA 304-C:17-a, or a restated certificate of formation under RSA 304-C:17, a fee in the amount of \$35; and upon the receipt for filing of a certificate of cancellation of a domestic limited liability company under RSA 304-C:59, a fee in the amount of \$35.

(d) Upon receipt for filing of an annual report under RSA 304-C:80, a fee in the amount of \$100; for failure or refusal to file an annual report or pay the filing fee on or before April 1 of any year, an additional late filing fee in the amount of \$50; upon receipt for filing of an application for reinstatement pursuant to RSA 304-C:54, a fee of \$135; and upon receipt for filing of an application for late reinstatement pursuant to RSA 304-C:54-a, a fee of \$500.

(e) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$1 per page and \$5 for the certificate.

(f) Upon the receipt for filing of an application for registration as a foreign limited liability company under RSA 304-C:64, a fee in the amount of \$50; upon the receipt for filing of a certificate of cancellation under RSA 304-C:68, a fee in the amount of \$35; and upon receipt for filing of an amendment to an application under RSA 304-C:67, a fee in the amount of \$35.

(g) Upon the receipt for filing of a statement under RSA 304-C:66, III, a fee in the amount of \$15, and upon the receipt for filing of a statement under RSA 304-C:66, IV, a fee in the amount of \$15.

(h) For issuing any certificate of the secretary of state, including but not limited to a certificate of good standing, other than a certification of a copy under subparagraph I(e), a fee in the amount of \$5, except that for issuing any certificate of the secretary of state that recites all of a limited liability company's filings with the secretary of state, a fee of \$10 shall be paid for each such certificate.

(i) For receiving, filing or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$15.

II. The secretary of state shall establish, and may from time to time amend, a schedule of specific fees payable pursuant to this section.

§ 304-C:82. Administration

I. The secretary of state shall collect all fees required under this chapter and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expenses of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to this chapter have been received by him. Thereafter, he shall pay the expenses of administering this chapter out of the fees collected under this chapter and shall reimburse the treasury for previous expenses paid by him. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

§ 304-C:83. Rulemaking

The secretary of state may adopt rules, under RSA 541-A, necessary to implement the provisions of this chapter.

§ 304-C:84. Severability

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

§ 304-C:85. Reserved Power of State of New Hampshire to Alter or Repeal Chapter

All provisions of this chapter may be altered from time to time or repealed, and all rights of members and managers are subject to this reservation.