

CHAPTER 11. WINDING UP AND TERMINATION OF DOMESTIC ENTITY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law:

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(2) "Event requiring a winding up" means an event specified by Section 11.051.

(3) "Existing claim" with respect to an entity means:

(A) a claim against the entity that existed before the entity's termination and is not barred by limitations; or

(B) a contractual obligation incurred after termination.

(4) "Terminated entity" means a domestic entity the existence of which has been:

(A) terminated in a manner authorized or required by this code, unless the entity has been reinstated in the manner provided by this code; or

(B) forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

(5) "Terminated filing entity" means a terminated entity that is a filing entity.

(6) "Voluntary decision to wind up" means the determination to wind up a domestic entity made by the domestic entity or the owners, members, or governing authority of the domestic entity in the manner specified by the title of this code governing the domestic entity.

(7) "Voluntary winding up" means winding up as a result of a voluntary decision to wind up.

(8) "Winding up" means the process of winding up the business and affairs of a domestic entity as a result of the occurrence of an event requiring winding up.

Source Law:

TBCA 7.12.F
F. In this Article:

(1) The term "dissolved corporation" means a corporation (a) that was voluntarily dissolved by the issuance of a certificate of dissolution by the Secretary of State and was not issued a

certificate of revocation of dissolution pursuant to Section C of Article 6.05 of this Act, (b) that was involuntarily dissolved by the Secretary of State and was not reinstated pursuant to Section E of Article 7.01 of this Act, (c) that was dissolved by decree of a court when the court has not liquidated all the assets and business of the corporation as provided in this Act, (d) that was dissolved by the expiration of its period of duration and has not revived its existence as provided in this Act, or (e) whose charter was forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

(2) The term "claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(3) The term "existing claim" means a claim that existed before dissolution and is not otherwise barred by limitations or a contractual obligation incurred after dissolution.

TNPCA 7.12.H

H. In this article:

(1) "Dissolved corporation" means a corporation that was dissolved:

(a) by the issuance of a certificate of dissolution or other action by the Secretary of State;

(b) by a decree of a court when the court has not liquidated all the assets and affairs of the corporation as provided in this Act; or

(c) by expiration of its period of duration if the corporation has not revived its existence as provided in this Act.

(2) "Claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(3) "Existing claim" means a claim that existed before dissolution and is not otherwise barred by limitations or a contractual obligation incurred after dissolution.

TLLCA 8.12.A

A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

Revisor's Note:

Section 11.001 defines terms used in Chapter 11 of the revised law. Existing terminology and processes for the termination of the existence of a corporation and partnership vary. For example, a corporation's business and affairs are "liquidated" prior to the formal filing effecting a "dissolution," whereas a

limited partnership's business and affairs are "wound up" after the occurrence of an event resulting in "dissolution." The Code standardizes the language and processes relating to the winding up and termination of all domestic entities; however, Chapter 11 does not apply to unincorporated nonprofit associations by virtue of Section 252.017. Because most of Chapter 11 is derived from the TBCA and TNPCA, it does not represent a material change for entities whose source governing laws incorporate the TBCA or TNPCA by reference, such as the TPCA, TPAA, CAA, TREITA, and TLLCA.

Chapter 11 uses the term "terminated entity" to refer to a domestic entity whose legal existence has come to an end, either voluntarily or involuntarily. This generic term replaces the term "dissolved corporation" from the source laws. The definition of "terminated entity" refers generally to the termination of existence of the entity instead of attempting to list all the different methods of dissolving an entity as found in the source laws. The revised law also introduces the term "terminated filing entity," which is a terminated entity that was a filing entity.

The term "winding up" is used in the revised law to refer to the liquidation and termination process. New definitions of "voluntary winding up" and "voluntary decision to wind up" are introduced in the revised law to simplify many of the subsequent provisions in the revised law that relate to a voluntary determination by a domestic entity to wind up. In addition, a key new definition of "event requiring a winding up" is added through a cross-reference to Section 11.051. This definition also permits subsequent sections of the revised law to contain simplified language.

(Sections 11.002-11.050 reserved for expansion)

SUBCHAPTER B. WINDING UP OF DOMESTIC ENTITY

Revised Law:

Sec. 11.051. EVENT REQUIRING WINDING UP OF DOMESTIC ENTITY. Winding up of a domestic entity is required on:

- (1) the expiration of the domestic entity's period of duration, if not perpetual;
- (2) a voluntary decision to wind up the domestic entity;
- (3) an event specified in the governing documents of the domestic entity requiring the winding up, dissolution, or termination of the domestic entity;
- (4) an event specified in this code requiring the winding up or termination of the domestic entity; or
- (5) a decree by a court requiring the winding up or dissolution of the domestic entity, rendered under this code or other law.

Source Law:

TBCA 6.01

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators or its directors at any time in the following manner

TBCA 6.02.A

A. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

TBCA 6.03.A

A. A corporation may be dissolved by the act of the corporation when authorized in the following manner

TBCA 7.01.A, B & F

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General

B. A corporation may be dissolved involuntarily by order of the Secretary of State

* * *

F. When a corporation is convicted of a felony or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if

TBCA 7.09

Art. 7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and business of a corporation, . . . the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

TBCA 7.12.E

E. A dissolved corporation that was dissolved by the expiration of the period of its duration

TLLCA 6.01.A(1), (2), (3), (5) & (6)

Art. 6.01. A. Except as provided by Section B of this Article, a limited liability company shall be dissolved on the first of the following to occur:

(1) the period, if any, fixed for the duration of the limited liability company expires;

(2) the occurrence of events specified in the articles of organization or regulations to cause dissolution;

(3) the action of the members to dissolve the limited liability company;

* * *

(5) except as otherwise provided in the regulations, upon the death, expulsion, withdrawal pursuant to or as provided in the articles of organization or regulations, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company; or

(6) entry of a decree of judicial dissolution under Section 6.02 of this Act.

TNPCA 6.01.A

A. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act, a resolution that the corporation be dissolved shall be submitted to a vote at a meeting of members A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

TNPCA 7.01.A, B & F

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General

B. A corporation may be dissolved involuntarily by order of the Secretary of State

* * *

F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if

TNPCA 7.09

Art. 1396-7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and affairs of a corporation . . . the court shall enter a decree dissolving the corporation, whereupon the corporation shall cease to exist.

TNPCA 7.12.G

G. A dissolved corporation that was dissolved by the expiration of the period of its duration

TPAA 8.B(1)

(B) Continuity. Articles of association may provide that a professional association

(1) shall continue . . . until dissolved by a vote of two-thirds of the members, and

TREITA 3.10.A(6)

(6) The period of its duration, which may be for a term of years or perpetual.

TREITA 19.10

Sec. 19.10. A real estate investment trust may be dissolved by the affirmative vote of the holders of at least two-thirds of the outstanding voting shares of the real estate investment trust

TRLPA 8.01

Sec. 8.01. A limited partnership is dissolved and its affairs shall be wound up only on the first of the following to occur:

(1) the occurrence of events specified in the partnership agreement to cause dissolution unless within 90 days after the event causing the dissolution, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership;

(2) written consent of all partners to dissolution;

(3) an event of withdrawal of a general partner, unless:

(A) there remains at least one general partner and the partnership agreement permits the business of the limited

partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or

(B) within 90 days after the event of withdrawal, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership and, to the extent that they desire or if there are no remaining general partners, agree to the appointment, effective as of the date of withdrawal, of one or more new general partners; or

(4) entry of a decree of judicial dissolution under Section 8.02 of this Act.

TRLPA 8.02

Sec. 8.02. On application by or for a partner, a court of competent jurisdiction may decree dissolution of a limited partnership

TRPA 8.01(a), (b)(1) & (2), (c), (d) & (e)

(a) Express Will of Majority-in-Interest in Certain Partnerships. In a partnership that is not for a definite term or a particular undertaking or in which the partnership agreement does not provide for winding up on a specified event, the express will of a majority-in-interest of the partners who have not assigned their interests requires a winding up of the partnership.

(b) Term or Undertaking. In a partnership for a definite term or particular undertaking, winding up is required on:

(1) the express will of all the partners; or

(2) the expiration of the term or the completion of the undertaking, unless otherwise continued under Section 4.07.

(c) Agreement on Specified Event. In a partnership in which the partnership agreement provides for winding up on a specified event, winding up is required on:

(1) the express will of all the partners; or

(2) the occurrence of the specified event, unless otherwise continued under Section 4.07.

(d) Illegal to Continue. An event that makes it illegal for all or substantially all of the business of the partnership to be continued requires a winding up of a partnership, but a cure of illegality within 90 days after the date of notice to the partnership of the event is effective retroactively to the date of the event for purposes of this subsection.

(e) Judicial Decree. A judicial decree, on application by a partner, requires a winding up if the decree determines that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

Revisor's Note:

Sections 11.001(2) and 11.051 introduce a new term "event requiring a winding up" to describe, for general reference purposes, the various conditions or events triggering the liquidation and termination process. These conditions or events are derived from the source law and standardized to the extent set forth in this chapter of the revised law. Those events that are not common for all entities are found in Sections 11.056-11.058 of the revised law.

Section 11.051(3) is new as to corporations, other than with respect to a period of duration stated in the certificate of formation. See the Revisor's Note to Section 11.059.

Revised Law:

Sec. 11.052. WINDING UP PROCEDURES. (a) Except as provided by the title of this code governing the domestic entity, on the occurrence of an event requiring winding up of a domestic entity, unless the event requiring winding up is revoked under Section 11.151 or canceled under Section 11.152, the owners, members, managerial officials, or other persons specified in the title of this code governing the domestic entity shall, as soon as reasonably practicable, wind up the business and affairs of the domestic entity. The domestic entity shall:

(1) cease to carry on its business, except to the extent necessary to wind up its business;

(2) if the domestic entity is not a partnership, send a written notice of the winding up to each known claimant against the domestic entity;

(3) collect and sell its property to the extent the property is not to be distributed in kind to the domestic entity's owners or members; and

(4) perform any other act required to wind up its business and affairs.

(b) During the winding up process, the domestic entity may prosecute or defend a civil, criminal or administrative action.

Source Law:

TBCA 6.04.A(1)-(3)

A. Before filing articles of dissolution:

(1) The corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The corporation shall cause written notice by registered or certified mail of its intention to dissolve to be mailed to each known claimant against the corporation.

(3) The corporation shall proceed to collect its assets, dispose of such of its properties as are not to be distributed in kind to its shareholders . . . and do all other acts required to liquidate its business and affairs

TLLCA 6.03

Art. 6.03. A. On the dissolution of a limited liability company, the limited liability company's affairs shall be wound up as soon as reasonably practicable. The winding up shall be accomplished by the managers or members or by any other person or persons designated by the articles of organization, by the regulations, or by resolution of the managers or members. . . .

TLLCA 6.05

Art. 6.05. A. Before filing articles of dissolution:

(1) The limited liability company shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The limited liability company shall cause written notice by registered or certified mail of its intention to dissolve to be mailed to each known creditor of and claimant against the limited liability company.

(3) The limited liability company shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members

TREITA 19.10

Sec. 19.10. . . . Upon receiving such vote, the trust manager(s) shall liquidate the real estate investment trust

TRLPA 8.04

Sec. 8.04. (a) Except as provided in the partnership agreement, on the dissolution of a limited partnership, the partnership's affairs shall be wound up as soon as reasonably practicable, and the winding up shall be accomplished by the general partners who have not wrongfully dissolved a limited partnership or, if there are none who have not wrongfully dissolved the partnership, by the limited partners or a person chosen by the limited partners. . . .

(b) On the dissolution of a limited partnership and until the filing of a certificate of cancellation as provided by Section 2.03 of this Act, unless a written partnership agreement provides otherwise, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership:

* * *

(2) settle and close the limited partnership's business;

(3) dispose of and convey the limited partnership's property for cash, unless a written partnership agreement permits a transfer on noncash terms;

TRPA 8.03(a) & (b)(2), (3) & (6)

(a) Persons Authorized to Wind Up. After the occurrence of an event requiring a winding up:

(1) the partners who have not withdrawn may wind up a partnership's business;

(2) the legal representative of the last surviving partner may wind up a partnership's business; or

(3) on application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 7.01(k), a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

(b) Authorized Actions. To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the partnership, a person winding up a partnership's business may:

* * *

(2) settle and close the partnership's business;

(3) dispose of and convey the partnership's property;

* * *

(6) perform any other necessary act.

Revisor's Note:

Section 11.052 sets forth the actions to be taken by a domestic entity upon the occurrence of an event requiring the winding up of the entity. One of the required actions is the provision of written notice to each known claimant against the domestic entity. Existing provisions in the TRLPA and TRPA do not require written notification be sent to each known claimant. Thus, the revised law also excludes partnerships from the notice requirement of subsection (a)(2).

Existing provisions in the TBCA and TLLCA require a corporation and limited liability company to mail such notification by registered or certified mail. Section 11.052 does not restrict how such notification must be made and would permit notification by electronic or other technological means.

Revised Law:

Sec. 11.053. PROPERTY APPLIED TO DISCHARGE LIABILITIES AND OBLIGATIONS. (a) Except as provided by Subsection (b) and the title of this code governing the domestic entity, a domestic entity in the process of winding up shall apply and distribute its property to discharge, or make adequate provision for the discharge of, all of the domestic entity's liabilities and obligations.

(b) Except as provided by the title of this code governing the domestic entity, if the property of a domestic entity is not sufficient to discharge all of the domestic entity's liabilities and obligations, the domestic entity shall:

(1) apply its property, to the extent possible, to the just and equitable discharge of its liabilities and obligations, including liabilities and obligations owed to owners or members, other than for distributions; or

(2) make adequate provision for the application of the property described by Subdivision (1).

(c) Except as provided by the title of this code governing the domestic entity, after a domestic entity has discharged, or made adequate provision for the discharge of, all of its liabilities and obligations, the domestic entity shall distribute the remainder of its property, in cash or in kind, to the domestic entity's owners according to their respective rights and interests.

(d) A domestic entity may continue its business wholly or partly, including delaying the disposition of property of the domestic entity, for the limited period necessary to avoid unreasonable loss of the entity's property or business.

Source Law:

TBCA 6.04.A(3)

A. Before filing articles of dissolution:

(3) The corporation shall proceed to . . . pay, satisfy, or discharge all its debts, liabilities, and obligations, or make adequate provision for payment, satisfaction, or discharge thereof, . . . except that if the properties and assets of the corporation are not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, the corporation shall apply its properties and assets so far as they will go to the just and equitable payment, satisfaction, or discharge of its debts, liabilities, and obligations or shall make adequate provision for such application. After paying, satisfying, or discharging all its debts, liabilities,

and obligations, or making adequate provision for payment, satisfaction, or discharge thereof, the corporation shall then distribute the remainder of its properties and assets, either in cash or in kind, to its shareholders according to their respective rights and interests.

TLLCA 6.04.A(1)

(1) To the extent otherwise permitted by law, to creditors, including members who are creditors in satisfaction of liabilities (other than for distributions) of the limited liability company, whether by payment or by establishment of reserves;

TLLCA 6.05.A(3)

(3) The limited liability company shall proceed to . . . pay, satisfy or discharge its liabilities and obligations, or make adequate provisions for payment and discharge thereof, . . . in case its property and assets are not sufficient to satisfy or discharge all the limited liability company's liabilities and obligations, the limited liability company shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations. After paying or discharging all of its obligations, or making adequate provisions for payment and discharge thereof, the limited liability company shall then distribute the remainder of its assets, either in cash or in kind, among its members according to their respective rights and interest.

TNPCA 6.02.A(1)

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

TREITA 19.10

Sec. 19.10. . . . Upon receiving such vote, the trust manager(s) shall . . . distribute the remaining property and assets of the real estate investment trust among its shareholders in accordance with their respective rights and interests after applying such property as far as it will go to the just and equitable payment of the liabilities and obligations of the real estate investment trust. . . .

TRLPA 8.04(a)(4) & (5)

(4) discharge or make reasonable provision to pay the limited partnership's liabilities; and

(5) distribute to the partners any remaining assets of the limited partnership.

TRLPA 8.05

Sec. 8.05. On the winding up of a limited partnership, its assets shall be paid or transferred as follows:

(1) to the extent otherwise permitted by law, to creditors, including partners who are creditors other than solely as a result of the application of Section 6.06 of this Act, in satisfaction of liabilities of the limited partnership, whether by payment or the making of reasonable provision for payment thereof;

(2) unless otherwise provided by the partnership agreement, to partners and former partners in satisfaction of the partnership's liability for distributions under Section 6.01 of this Act or payments under Section 6.04 of this Act; and

(3) unless otherwise provided by the partnership agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Section 5.04 of this Act.

TRPA 8.03(b)(4) & (5), (c)

(4) satisfy or provide for the satisfaction of the partnership's liabilities;

(5) distribute to the partners any remaining property of the partnership; and

* * *

(c) Continuation to Preserve Value. A person winding up a partnership's business may continue the business of the partnership in whole or in part, including delaying the disposition of partnership property, but only for the limited period necessary to avoid unreasonable loss of the partnership's property or business.

TRPA 8.06(a)

(a) Application of Property to Obligations. In winding up the partnership business, the property of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by other applicable law, partners who are creditors other than in their capacities as partners. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b).

Revisor's Note:

Section 11.053 describes the application and distribution of a domestic entity's property in the process of winding up. Subsection (d) permits a domestic entity to continue its business in whole or in part, including delaying the disposition of the entity's property, only for the limited period necessary to avoid unreasonable loss of the entity's property or business. This provision provides additional flexibility in the winding up process, is similar to a provision found in TRPA Article 8.03(c) and is made applicable to all domestic entities.

Revised Law:

Sec. 11.054. COURT SUPERVISION OF WINDING UP PROCESS. Subject to the other provisions of this code, on application of a domestic entity or an owner or member of a domestic entity, a court may:

- (1) supervise the winding up of the domestic entity;
- (2) appoint a person to carry out the winding up of the domestic entity; and
- (3) make any other order, direction, or inquiry that the circumstances may require.

Source Law:

TBCA 6.04.A(4)

A. Before filing articles of dissolution:

(4) The corporation, at any time during the liquidation of its business and affairs, may make application to any district court of this State in the county in which the registered office of the corporation is situated to have the liquidation continued under the supervision of such court as provided in this Act.

TLLCA 6.05.A(4)

(4) The limited liability company, at any time during the liquidation of its business and affairs, may make application to any district court of this state in the county in which the registered office of the limited liability company is situated to have the liquidation continued under the supervision of such court as provided in this Act.

TRLPA 8.04(a)

Sec. 8.04. (a) . . . In addition, a court of competent jurisdiction, on cause shown, may wind up the limited partnership's affairs on application of any partner or the partner's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

TRPA 8.03(a)(3)

(3) on application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 7.01(k), a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

Revisor's Note:

The revised law permits an owner or member of a corporation or limited liability company to apply to a district court to supervise the winding up of the corporation or limited liability company. The TBCA, TNPCA, and TLLCA do not

explicitly authorize such application by an owner or a member. A similar result can be achieved, however, through an action by an owner or member for appointment of a receiver under the provisions of TBCA and TNPCA, Arts. 7.05 and 7.06, and TLLCA Art. 8.12.

The revised law omits the provisions in the TRLPA and the TRPA that permit a partner's legal representative or assignee/transferee to apply for court action. This right, however, is granted by Sections 152.702(b) and 153.505(b). In addition, the revised law explicitly allows the partnership to apply for court supervision, which is not clear in the source law but could be implied from the explicit power given to the partners to make such application.

Revised Law:

Sec. 11.055. COURT ACTION OR PROCEEDING DURING WINDING UP. During the winding up process, a domestic entity may continue prosecuting or defending a court action or proceeding by or against the domestic entity.

Source Law:

TBCA 7.12.A(1)

A. A dissolved corporation shall continue its corporate existence for a period of three years from the date of dissolution, for the following purposes:

(1) prosecuting or defending in its corporate name any action or proceeding by or against the dissolved corporation;

TLLCA 6.08.B

B. . . . Upon the issuance of such certificate of dissolution the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings in appropriate limited liability company action by members, managers and representatives as provided by the laws of this state.

TNPCA 7.12.A(1)

(1) prosecuting or defending in its corporate name any action or proceeding by or against the corporation;

TRLPA 8.04(b)(1)

(b) On the dissolution of a limited partnership and until the filing of a certificate of cancellation as provided by Section 2.03 of this Act, unless a written partnership agreement provides otherwise, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership:

(1) prosecute and defend civil, criminal, or administrative suits;

TRPA 8.03(b)(1)

(b) Authorized Actions. To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and

for and on behalf of the partnership, a person winding up a partnership's business may:

- (1) prosecute and defend civil, criminal, or administrative suits;

Revisor's Note:

No substantive change is intended. The revised law is modeled more closely on the TRPA and TRLPA provisions. While the source law provisions in the TBCA, TLLCA and TNPCA only explicitly apply after the entity's existence is terminated, presumably the entity has the same power during the winding up process as it has post-termination.

Revised Law:

Sec. 11.056. SUPPLEMENTAL EVENT REQUIRING WINDING UP OF LIMITED LIABILITY COMPANY. In addition to an event listed under Section 11.051, the termination of the continued membership of the last remaining member of a limited liability company is an event requiring a winding up unless, not later than the 90th day after the date of the termination, the legal representative or successor of the last remaining member agrees:

- (1) to continue the company; and

- (2) to become a member of the company effective as of the date of the termination or to designate another person who agrees to become a member of the company effective as of the date of the termination.

Source Law:

Del. Limited Liability Company Act Sec. 18-801(a)(4)

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

* * *

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

- a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of

such member of its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

b. A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

TLLCA 601.A(5)

Art. 6.01. A. Except as provided by Section B of this Article, a limited liability company shall be dissolved on the first of the following to occur:

* * *

(5) except as otherwise provided in the regulations, upon the death, expulsion, withdrawal pursuant to or as provided in the articles of organization or regulations, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company; or

Revisor's Note:

Section 11.056 provides that, in addition to the events listed under Section 11.051, the termination of the membership of the last remaining member of a limited liability company is an event that requires the winding up of the company unless within 90 days after the termination, the legal representative or successor of the last remaining member agrees to continue the company and, from the date of the termination, to become a member or to nominate another person to become a member of the company. The primary source of this Section is Sec. 18-801(a)(4) of the Delaware Limited Liability Company Act.

The death, expulsion, withdrawal, bankruptcy of a member or other event terminating that member's membership, which had provided one of the possible events causing a dissolution of the limited liability company under TLLCA Art. 6.01.A(5), was omitted as an event requiring the winding up of a limited liability company. Changes in the applicable Treasury Regulations since the passage of the TLLCA make a dissolution of the limited liability company as a result of such an event no longer helpful to ensure treatment of the limited liability company as a partnership for federal income tax purposes.

Revised Law:

Sec. 11.057. SUPPLEMENTAL EVENTS REQUIRING WINDING UP OF GENERAL PARTNERSHIP. (a) An event requiring winding up of a general partnership includes, in addition to any event specified in Section 11.051, the following:

(1) in a general partnership that is not for a definite term or for a particular undertaking or in which the partnership agreement does not provide for winding up the partnership business on a specified event, the express will of a majority-in-interest of the partners who have not assigned their interests;

(2) in a general partnership for a definite term or for a particular undertaking, on:

(A) the express will of all of the partners; or

(B) the expiration of the term or the completion of the undertaking, unless otherwise continued under Section 152.709;

(3) in a general partnership in which the partnership agreement provides for the winding up of the partnership business on a specified event, upon:

(A) the express will of all of the partners; or

(B) the occurrence of the specified event, unless otherwise continued under Section 152.709;

(4) an event that makes it illegal for all or substantially all of the partnership business to be continued, but a cure of illegality before the 91st day after the date of notice to the general partnership of the event is effective retroactively to the date of the event for purposes of this subsection;

(5) the sale of all or substantially all of the property of the general partnership outside the ordinary course of business; and

(6) if a general partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up of the partnership business, a request for winding up the partnership business from a partner, other than a partner who has agreed not to withdraw.

(b) An event described by Subsection (a)(6) requires the winding up of a general partnership 60 days after the date on which the general partnership receives notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the general partnership.

Source Law:

TRPA 8.01

Art. 6132b-8.01. Events Requiring Winding Up of Partnership

(a) Express Will of Majority-in-Interest in Certain Partnerships. In a partnership that is not for a definite term or a particular undertaking or in which the partnership agreement does not provide for winding up on a specified event, the express will of a majority-in-interest of the partners who have not assigned their interests requires a winding up of the partnership.

(b) Term or Undertaking. In a partnership for a definite term or particular undertaking, winding up is required on:

(1) the express will of all the partners; or

(2) the expiration of the term or the completion of the undertaking, unless otherwise continued under Section 4.07.

(c) Agreement on Specified Event. In a partnership in which the partnership agreement provides for winding up on a specified event, winding up is required on:

(1) the express will of all the partners; or

(2) the occurrence of the specified event, unless otherwise continued under Section 4.07.

(d) Illegal to Continue. An event that makes it illegal for all or substantially all of the business of the partnership to be continued requires a winding up of a partnership, but a cure of illegality within 90 days after the date of notice to the partnership of the event is effective retroactively to the date of the event for purposes of this subsection.

* * *

(f) Sale of Property. The sale of all or substantially all of the property of the partnership outside the ordinary course of business requires a winding up of a partnership.

(g) Notice from Partner if No Term or Undertaking; Option to Continue. If a partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up, a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, requires a winding up 60 days after the date of the partnership's receipt of notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the partnership. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 11.058. SUPPLEMENTAL EVENTS REQUIRING WINDING UP OF LIMITED PARTNERSHIP. An event requiring the winding up of a limited partnership includes, in addition to any event specified in Section 11.051, the following:

(1) written consent of all partners to the winding up and termination of the limited partnership; and

(2) an event of withdrawal of a general partner.

Source Law:

TRLPA 8.01(2), (3)

(2) written consent of all partners to dissolution;

(3) an event of withdrawal of a general partner,

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 11.059. SUPPLEMENTAL PROVISIONS FOR CORPORATIONS. For purposes of Section 11.051 (3), the event requiring the winding up, dissolution, or termination of a domestic corporation must be specific in:

(1) the certificate of formation of the corporation; or

(2) by-law of the corporation adopted by the owners or members of the corporation in the same manner as an amendment to the certificate of formation of the corporation.

Source Law:

New.

Revisor's Note:

Existing law does not provide for corporations to be dissolved upon the occurrence of an event (other than upon the expiration of its duration) except upon the action of the corporation or a governmental authority. This provision places a corporation on par with other entities in having the flexibility to require its winding up upon the occurrence of a specified event, but makes clear that the event must be contained in the certificate of formation of the corporation or in a by-law provision adopted by the owners or members of the corporation in the same manner as an amendment to the certificate of formation.

(Sections 11.060-11.100 reserved for expansion)

SUBCHAPTER C. TERMINATION OF DOMESTIC ENTITY

Revised Law:

Sec. 11.101. CERTIFICATE OF TERMINATION FOR FILING ENTITY. (a) On completion of the winding up process under Subchapter B, a filing entity must file a certificate of termination in accordance with Chapter 4.

(b) A certificate from the comptroller that all taxes administered by the comptroller under Title 2, Tax Code, have been paid must be filed with the certificate of termination in accordance with Chapter 4 if the filing entity is a professional corporation, for-profit corporation, or limited liability company.

(c) The certificate of termination must contain:

- (1) the name of the filing entity;
- (2) the name and address of each of the filing entity's governing persons;
- (3) the entity's file number assigned by the secretary of state, unless the entity is a real estate investment trust;
- (4) the nature of the event requiring winding up;
- (5) a statement that the filing entity has complied with the provisions of this code governing its winding up; and
- (6) any other information required by this code to be included in the certificate of termination for the filing entity.

Source Law:

TBCA 6.06

Art. 6.06. Articles of Dissolution

A. If voluntary dissolution proceedings have been taken and have not been revoked, then when . . . the remainder of its properties and assets have been distributed to its shareholders according to their respective rights and interests, articles of dissolution shall be executed on behalf of the corporation by an officer, which shall set forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) That all debts, liabilities, and obligations of the corporation have been paid, satisfied, or discharged or that adequate provision has been made for payment, satisfaction, or discharge thereof or, if the properties and assets of the corporation were not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, that

all properties and assets of the corporation have been applied so far as they would go to the just and equitable payment of those debts, liabilities, and obligations or that adequate provision has been made for such application.

(5) That the remainder of the properties and assets of the corporation have been distributed to its shareholders according to their respective rights and interests or that no properties or assets of the corporation remained for distribution to shareholders after applying the properties and assets of the corporation so far as they would go to the just and equitable payment of the debts, liabilities, and obligations of the corporation or making adequate provision for such application.

(6) If the corporation elected to dissolve by the written consent of all of its shareholders, a statement that a consent approving a dissolution of the corporation was signed by all shareholders of the corporation or was signed in their names by their attorneys thereunto duly authorized.

(7) If the corporation elected to dissolve by act of the corporation:

(a) A statement that a resolution approving a dissolution of the corporation was adopted by the shareholders of the corporation and of the date of adoption.

(b) The number of shares outstanding and entitled to vote on the resolution, and, if the shares of any class or series were entitled to vote as a class, the designation and number of outstanding shares of each such class or series.

(c) The number of shares entitled to vote on the resolution generally that voted for and against such resolution, respectively, and if the shares of any class or series were entitled to vote as a class, the number of shares of each such class or series voted for and against such resolution, respectively.

TBCA 6.07.A

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all taxes administered by the Comptroller under Title 2, Tax Code, have been paid. . . .

TLLCA 6.07

Art. 6.07. A. If voluntary dissolution proceedings have not been revoked, then, when . . . all of the remaining property and assets of the limited liability have been distributed to its members according to their respective rights and interest, articles of dissolution shall be executed on behalf of the limited liability company by a manager or authorized member, or in accordance with Section G, Article 2.23, of this Act, which shall set forth:

(1) The name of the limited liability company.

(2) The names and respective addresses of its managers, if any.

(3) That all debts, obligations, and liabilities of the limited liability company have been paid or discharged or that adequate provision has been made therefor, or, in case the limited liability company's property and assets were not sufficient to satisfy and discharge all its debts, liabilities, and obligations, that all property and assets have been applied so far as they will go to the payment thereof in a just and equitable manner and that no property or assets remain available for distribution among its members, or, that the limited liability company has not acquired any debts, obligations, or liabilities.

(4) That all remaining property and assets of the limited liability company have been distributed among its members in accordance with their respective rights and interest or that no property remained for distribution to members after applying it as far as it would go to the just and equitable payment of the debts, liabilities, and obligations of the limited liability company, or that the limited liability company has not acquired any property or assets and therefore distributions to members were not required.

(5) If capital has not been paid into the limited liability company, a statement that the resolution was adopted by the act of a majority of the initial managers or a majority of the initial members named in the articles of organization in accordance with Section G, Article 2.23, of this Act and of the date of adoption.

(6) If the limited liability company elected to dissolve by action of its members, a statement that the resolution was adopted in accordance with Section D, Article 2.23, of this Act or as otherwise provided in the articles of incorporation or the regulations and the date of adoption.

TLLCA 6.08.A

Art. 6.08. A. The original and a copy of such articles of dissolution, along with a certificate from the comptroller that all taxes, including all applicable penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state. . . .

TNPCA 6.05

Art. 1396-6.05. Article of Dissolution

A. If voluntary dissolution proceedings have not been revoked, then when . . . all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be signed on behalf of the corporation by an officer and shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds (2/3) of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all the property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its members.

* * *

TPAA 18

Sec. 18. . . . The articles of dissolution shall set forth:

- (1) The name and address of the association;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of the members of its Board of Directors or Executive Committee; and
- (4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

TREITA 19.20

Sec. 19.20. (A) On the termination and liquidation of the real estate investment trust, an officer shall execute articles of dissolution on behalf of the real estate investment trust, and the articles of dissolution shall set forth:

- (1) the name of the real estate investment trust;
- (2) the names and respective addresses of its officers;

(3) the names and respective addresses of its trust managers;

(4) that all remaining property and assets of the real estate investment trust have been distributed among its shareholders in accordance with the shareholders' respective rights and interests after applying the property and assets to the just and equitable payment of the liabilities and obligations of the real estate investment trust;

(5) the date of the adoption of the resolution to dissolve the real estate investment trust by the shareholders of the real estate investment trust;

(6) the number of shares outstanding and the number of shares entitled to vote on the dissolution and, if the shares of any class or series are entitled to vote on the dissolution as a class, the designation and number of outstanding shares entitled to vote on the dissolution of each of those classes or series; and

(7) the number of shares voted for and against the dissolution, respectively, and, if the shares of any class or series are entitled to vote on the dissolution as a class, the number of shares of each of those classes or series that voted for and against the dissolution.

(B) A copy of the articles of dissolution shall be filed with the county clerk of the county of the principal place of business of the real estate investment trust.

TRLPA 2.03(a) & (b)

Sec. 2.03. (a) A certificate of limited partnership shall be canceled by paying the filing fee and filing a certificate of cancellation with the secretary of state:

(1) on the completion of the winding up of the partnership;
. . . .

(b) A certificate of cancellation must contain:

(1) the name of the limited partnership;

(2) the date of the filing of its certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective on the filing of the certificate; and

(5) any other information determined proper by the person filing the certificate of cancellation.

Revisor's Note:

Section 11.101 requires a domestic filing entity to file a certificate of termination upon completion of the winding up process, and sets forth the requirements of a certificate of termination to be filed with the appropriate filing officer on behalf of the entity. The filing requirements and information required in a certificate of dissolution vary under existing laws governing professional corporations, for-profit corporations, nonprofit corporations, professional associations, limited liability companies, and limited partnerships. Section 11.101 standardizes and simplifies the information to be contained in the certificate of termination. The revised law omits the requirements in several of the source laws to list the officers of the entity, to confirm that all debts have been paid and assets have been distributed and to describe the manner in which the dissolution was approved. The revised law requires the listing of the governing persons and the simple affirmative statement that the entity has followed the requirements of the Code with respect to the winding up process. The resulting standardization and simplification of the certificate of termination facilitates the preparation, filing and review processes for such documents.

Existing law does not clearly specify that a filing be made with the filing officer to reflect a filing entity's termination by reason of the expiration of the entity's stated period of duration. Under Section 11.101, a certificate of termination must be filed by the entity under such circumstances after the winding up process is complete.

Revised Law:

Sec. 11.102. EFFECTIVENESS OF TERMINATION OF FILING ENTITY. Except as otherwise provided by this chapter, the existence of a filing entity terminates on the filing of a certificate of termination with the filing officer.

Source Law:

TBCA 6.01.A(3)

(3) . . . Upon the issuance of such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

TBCA 6.07.B

B. . . . Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except as otherwise provided in Article 6.05 or Article 7.12 of this Act.

TLLCA 6.08.B

B. . . . Upon the issuance of such certificate of dissolution the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings in appropriate limited liability company action by members, managers and representatives as provided by the laws of this state.

TNPCA 6.06.B

B. . . . Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

TREITA 19.20(c)

(C) On the filing of the articles of dissolution with the county clerk of the county of the principal place of business of the real estate investment trust, the real estate investment trust shall cease to exist.

TRLPA 2.03(a)

(a) A certificate of limited partnership shall be canceled by paying the filing fee and filing a certificate of cancellation with the secretary of state:

- (1) on the completion of the winding up of the partnership;
-

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 11.103. EFFECTIVENESS OF TERMINATION OF NONFILING ENTITY. Except as otherwise provided by this chapter, the existence of a nonfiling entity terminates on the completion of the winding up of its business and affairs. Notice of the termination must be provided by the nonfiling entity in the manner provided in the governing documents of the nonfiling entity if notice of termination is required under the governing documents.

Source Law:

TRPA 8.02

Art. 6132b-8.02. Partnership Continues After Occurrence of Event Requiring Winding Up

A partnership continues after the occurrence of an event requiring winding up until the winding up of its business is completed, at which time the partnership is terminated.

Revisor's Note:

No substantive change is intended. As implied in the source law, the revised law confirms that the partnership agreement may require notice of termination to the partnership's partners or other persons.

Revised Law:

Sec. 11.104. ACTION BY SECRETARY OF STATE. The secretary of state shall remove from its active records a domestic filing entity whose period of duration has expired when the secretary of state determines that:

(1) the entity has failed to file a certificate of termination in accordance with Section 11.101; and

(2) the entity has failed to file an amendment to extend its existence in accordance with Section 11.152.

Source Law:

New

Revisor's Note:

Existing law provides that, by operation of law, the entity's existence ceases upon expiration of the entity's duration. This has led to uncertainty as to existence of the entity following such expiration. The existing law does not specifically authorize the Secretary of State to cancel the certificate of formation of an entity whose period of duration has expired. At the request of the Secretary of State's office, the revised law provides this authority.

Revised Law:

Sec. 11.105. SUPPLEMENTAL INFORMATION REQUIRED BY CERTIFICATE OF TERMINATION OF NONPROFIT CORPORATION. (a) In addition to the information required by Section 11.101, the certificate of termination filed by a nonprofit corporation that has completed its winding up process must contain a statement that:

(1) any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed in accordance with this chapter and Chapter 22; and

(2) there is no suit pending against the nonprofit corporation or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the nonprofit corporation in a pending suit.

(b) In addition to the statements required by Subsection (a), if the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, the certificate of termination must include a statement that distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with this code for the distribution of that property.

Source Law:

TNPCA 6.05.A(5) & (6)

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for

charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a statement that a plan of distribution has been adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Revisor's Note:

No substantive change is intended.

(Sections 11.106-11.150 reserved for expansion)

SUBCHAPTER D. REVOCATION AND CONTINUATION

Revised Law:

Sec. 11.151. REVOCATION OF VOLUNTARY WINDING UP. (a) Before the termination of the existence of a domestic entity takes effect, the domestic entity may revoke a voluntary decision to wind up the entity by approval of the revocation in the manner specified in the title of this code governing the entity.

(b) A domestic entity may continue its business following the revocation of a voluntary decision to wind up under Subsection (a).

Source Law:

TBCA 6.05.A & D

A. At any time prior to the issuance of a certificate of dissolution by the Secretary of State, or within 120 days thereafter, a corporation may revoke voluntary dissolution proceedings:

- (1) By the written consent of all of its shareholders.
- (2) By the act of the corporation in the following manner:

* * *

D. If a corporation revokes voluntary dissolution proceedings prior to the issuance by the Secretary of State of a certificate of dissolution of the corporation, the corporation may again carry on its business as though voluntary dissolution proceedings had not occurred. . . .

TLLCA 6.06.A & B

Art. 6.06. A. At any time before the issuance of a certificate of dissolution by the Secretary of State, a limited liability company may revoke voluntary dissolution proceedings by the written consent of all its members.

B. Upon the revocation of voluntary dissolution proceedings the limited liability company may again carry on its business.

TNPCA 6.04.A & B

A. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. . . .

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, a resolution that the voluntary dissolution proceedings be revoked shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. . . .

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

TRPA 8.01(g)

(g) Notice from Partner if No Term or Undertaking; Option to Continue. If a partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up, a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, requires a winding up 60 days after the date of the partnership's receipt of notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the partnership. . . .

TRLPA 8.01(1) & (3)

Sec. 8.01. A limited partnership is dissolved and its affairs shall be wound up only on the first of the following to occur:

(1) the occurrence of events specified in the partnership agreement to cause dissolution unless within 90 days after the event causing the dissolution, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership;

* * *

(3) an event of withdrawal of a general partner, unless:

(A) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or

(B) within 90 days after the event of withdrawal, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership and, to the extent that they desire or if there are no remaining general partners, agree to the appointment, effective as of the date of withdrawal, of one or more new general partners; or

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 11.152. CONTINUATION OF BUSINESS WITHOUT WINDING UP. (a) Subject to Subsections (c) and (d), a domestic entity to which an event requiring the winding up of the entity occurs as specified by Section 11.051(3) or (4) may cancel the event requiring winding up in the manner specified in the title of this code governing the domestic entity not later than the first anniversary of the date of the event requiring winding up or an earlier period prescribed by the title of this code governing the domestic entity.

(b) A domestic entity to which an event requiring winding up as specified in Section 11.051(1) occurs may cancel the event requiring winding up by amending its governing documents in the manner provided by this code, not later than the third anniversary of the date of the event requiring winding up or an earlier date prescribed by the title of this code governing the domestic entity, to extend the period of its duration. The expiration of the period of its duration does not by itself create a vested right on the part of an owner, member, or creditor of the entity to prevent the extension of its existence. An act undertaken or a contract entered into by a terminated entity during a period in which the entity could have extended its existence under this section is not invalidated by the expiration of the period of the entity's duration, regardless of whether the entity has taken any action to extend its existence.

(c) A domestic entity may not cancel an event requiring winding up specified in Section 11.051(3) and continue its business if the action is prohibited by the entity's governing documents or the title of this code governing the entity.

(d) A domestic entity may cancel an event requiring winding up specified in Section 11.051(4) and continue its business only if the action:

(1) is not prohibited by the entity's governing documents;
and

(2) is expressly authorized by the title of this code governing the entity.

(e) On cancellation of an event requiring winding up under this section, the domestic entity may continue its business.

Source Law:

TBCA 7.12.E

E. A dissolved corporation that was dissolved by the expiration of the period of its duration may, during the three-year period following the date of dissolution, amend its articles of incorporation by following the procedure prescribed in this Act to extend or perpetuate its period of existence. That expiration shall not of itself create any vested right on the part of any shareholder or creditor to prevent such an action. No act or contract of such a dissolved corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

TNPCA 7.12.G

G. A dissolved corporation that was dissolved by the expiration of the period of its duration may, during the three-year period following the date of dissolution, amend its articles of incorporation by following the procedure prescribed in this Act to extend or perpetuate its period of existence. That expiration shall not of itself create any vested right on the part of any member or creditor to prevent such an action. No act or contract of a dissolved corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TLLCA 6.01.B

B. A limited liability company is not dissolved if an event of dissolution described by Subsection (1), (2), or (5) of Section A of this Article occurs, there is at least one remaining member, and the business of the limited liability company is continued by the vote of the members or class as stated in the articles of organization or regulations of the limited liability company, or if not so stated, by all remaining members. Unless otherwise provided in the articles of organization or in the regulations, an election to continue the business of the limited liability company must be made within 90 days after the date of the occurrence of the event of dissolution. If an election to continue the business of the limited liability company is made following the termination of the period fixed for the duration of the limited liability

company or the occurrence of events specified in the articles of organization to cause dissolution, the election is not effective unless an appropriate amendment is made by the limited liability company to its articles of organization during the three-year period following the date of the event of dissolution, extending the period fixed for the duration of the limited liability company or deleting the event specified in the articles of organization that caused the dissolution, as applicable.

TRPA 4.07(a)

(a) Continuation by Express Agreement. If all the partners in a partnership for a definite term or a particular undertaking or for which the partnership agreement provides for winding up on a specified event agree to continue the business of the partnership despite the expiration of the term, the completion of the undertaking, or the occurrence of the event, other than the withdrawal of a partner, the partnership is continued and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring the winding up of the partnership business.

TRLPA 8.01(1) & (3)

(1) the occurrence of events specified in the partnership agreement to cause dissolution unless within 90 days after the event causing the dissolution, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership;

* * *

(3) an event of withdrawal of a general partner, unless:

(A) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or

(B) within 90 days after the event of withdrawal, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership and, to the extent that they desire or if there are no remaining general partners, agree to the appointment, effective as of the date of withdrawal, of one or more new general partners; or

Revisor's Note:

Subsections (a), (c) and (d) of the revised law relate to events requiring winding up under Section 11.051(3) and (4) and are derived generally from the TRPA, TRLPA and TLLCA and extended to apply to corporations and those other entities that incorporate the TBCA and TNPCA by reference. However, the events requiring winding up under Section 11.051(3) and (4)

rarely occur, and may not be authorized, in existing corporations because there are no provisions in the source law that automatically require winding up of a corporation and the governing documents of corporations rarely have such provisions. These provisions in the TRPA, TRLPA and TLLCA were driven by former federal income tax regulations which required dissolution upon certain events to preserve "flow-through" tax treatment as a partnership. With the adoption of the "check-the-box" regulations by the IRS, this requirement no longer exists for partnership tax treatment.

The revised law extends the period for cancellation from 90 days, as provided in the TRLPA and TLLCA, to one year for the events requiring winding up under Section 11.051(3) and (4) and to three years for expiration of the period of duration under 11.051(1) to permit more flexibility and to prevent unintended or unwarranted entity terminations. The three-year period matches existing corporate law for cancelling termination upon the expiration of the period of duration. The more recent TRPA does not have a similar 90-day time limit for general partnerships.

(Sections 11.153-11.200 reserved for expansion)

SUBCHAPTER E. REINSTATEMENT OF TERMINATED ENTITY

Revised Law:

Sec. 11.201. CONDITIONS FOR REINSTATEMENT. (a) A terminated entity may be reinstated under this subchapter if:

- (1) the termination was by mistake or inadvertent;
- (2) the termination occurred without the approval of the entity's governing persons when their approval is required by the title of this code governing the terminated entity;
- (3) the process of winding up before termination had not been completed by the entity; or
- (4) the legal existence of the entity is necessary to:
 - (A) convey or assign property;
 - (B) settle or release a claim or liability;
 - (C) take an action; or
 - (D) sign an instrument or agreement.

(b) A terminated entity may not be reinstated under this section if the termination occurred as a result of:

- (1) an order of a court or the secretary of state;

(2) an event requiring winding up that is specified in the title of this code governing the terminated entity, if that title prohibits reinstatement; or

(3) forfeiture under the Tax Code.

Source Law:

TBCA 6.05.A

A. At any time prior to the issuance of a certificate of dissolution by the Secretary of State, or within 120 days thereafter, a corporation may revoke voluntary dissolution proceedings

Revisor's Note:

Subchapter E permits a terminated entity to reinstate its status if one of the conditions in Section 11.201(a) exists, if such action is approved by its owners, members, or governing persons, and if a certificate of reinstatement is filed under Section 11.202 with the filing officer before the third anniversary date of the entity's termination. (The three-year time period is similar to the period of time set forth in the TBCA and TLLCA provisions relating to an entity's survival for certain limited purposes after dissolution.) TBCA Article 6.05 permits a for-profit corporation to revoke a voluntary dissolution, without any conditions, by action of its shareholders within 120 days after the filing of the certificate of dissolution. Subsection (a) of the revised law imposes conditions to reinstatement in an effort to provide a standardized provision that is fair for all filing entities. The conditions are intended to prevent unfair or unintentional consequences. Although the revised law is new for most entities, the reinstatement rights provided in the revised law parallel the entity survival provisions of Sections 11.356 and 11.357 and have several similar conditions for applicability. Sections 11.356 and 11.357 are derived from the TBCA, TNPCA and TLLCA. Thus, the revised law provides symmetry and consistency in application of provisions.

Revised Law:

Sec. 11.202. PROCEDURES FOR REINSTATEMENT. (a) To the extent applicable, a terminated entity, to be reinstated, must complete the requirements of this section not later than the third anniversary of the date the termination of the terminated entity's existence took effect.

(b) The owners, members, governing persons, or other persons must approve the reinstatement of the domestic entity in the manner provided by the title of this code governing the domestic entity.

(c) After approval of the reinstatement of a filing entity that was terminated, and not later than the third anniversary of the date of the filing of the entity's certificate of termination, the filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

(d) A certificate of reinstatement filed under Subsection (c) must contain:

- (1) the name of the filing entity;
- (2) the filing number assigned by filing officer to the entity;
- (3) the effective date of the entity's termination;
- (4) a statement that the reinstatement of the filing entity has been approved in the manner required by this code; and
- (5) the name of the entity's registered agent and the address of the entity's registered office.

(e) A letter of eligibility from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated must be filed with the certificate of reinstatement if the filing entity is a professional corporation, for-profit corporation, or limited liability company.

Source Law:

TBCA 6.05.B

B. After revocation of voluntary dissolution is authorized as provided in Section A of this Article, the corporation shall, if a certificate of dissolution of the corporation has been issued by the Secretary of State, deliver to the Secretary of State for filing within 120 days after such issuance the original and a copy of articles of revocation of dissolution executed on behalf of the corporation by an officer, that set forth:

- (1) the name of the corporation;
- (2) the date that the revocation of dissolution was authorized and, if the dissolution has become effective, the effective date of the dissolution that was revoked; and
- (3) if the corporation elected to revoke voluntary dissolution proceedings by the written consent of all of its shareholders, a copy of the consent, together with a statement that the consent was signed by all shareholders of the corporation or was signed in their names by their attorneys thereunto duly authorized; or
- (4) if the corporation elected to revoke voluntary dissolution proceedings by act of the corporation:
 - (a) a statement that a resolution revoking the voluntary dissolution was adopted by the shareholders of the corporation and of the date of the adoption thereof;
 - (b) the number of shares outstanding and entitled to vote on the resolution, and, if the shares of any class or series were

entitled to vote as a class, the designation and number of outstanding shares of each such class or series; and

(c) the number of shares entitled to vote on the resolution generally that voted for and against such resolution, respectively, and if the shares of any class or series were entitled to vote as a class, the number of shares of each such class or series voted for and against such resolution, respectively.

Revisor's Note:

See Revisor's Note to Section 11.201. Consistent with other provisions in the Code, the revised law eliminates detailed recitals in the certificate of reinstatement of how the owners approved the reinstatement and the results of any approval vote by the owners, as provided in the source law in TBCA 6.05.B(3) and (4).

Revised Law:

Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. If the secretary of state determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 is the same as, deceptively similar to, or similar to a name of a filing entity or foreign entity on file as provided by or reserved or registered under this code, the secretary of state may not accept for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains consent for the use of the similar name.

Source Law:

TBCA 6.05.C

C. If the Secretary of State finds that the articles of revocation of dissolution conform to law, the Secretary shall, when the appropriate filing fee is paid as required by law:

- (1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof;
- (2) File the original in his office;
- (3) Issue a certificate of revocation of dissolution to which he shall affix the copy; and
- (4) Deliver to the corporation or its representative the certificate of revocation of dissolution, together with the affixed copy.

Notwithstanding the foregoing provisions of this Section C, if the corporation's name is the same as or deceptively similar to a corporate name already on file or reserved or registered pursuant to this Act, the Secretary of State shall not issue to the corporation a certificate of revocation of dissolution unless the corporation contemporaneously amends its articles of incorporation to change its name.

Revisor's Note:

No substantive change is intended, except as described in the Revisor's Note to Section 11.201.

Revised Law:

Sec. 11.204. EFFECTIVENESS OF REINSTATEMENT OF NONFILING ENTITY. The reinstatement of a terminated nonfiling entity takes effect on the approval required by Section 11.202(b).

Source Law:

New

Revisor's Note:

The revised law permits the existence of a non-filing entity to be reinstated. The source law does not have any similar provisions. Section 11.204 establishes when a reinstatement of a non-filing entity is effective.

Revised Law:

Sec. 11.205. EFFECTIVENESS OF REINSTATEMENT OF FILING ENTITY. The reinstatement of a terminated filing entity that previously filed a certificate of termination takes effect on the filing of the entity's certificate of reinstatement.

Source Law:

TBCA 6.05.D

D. . . . If a corporation revokes voluntary dissolution proceedings after the issuance by the Secretary of State of a certificate of dissolution of the corporation, then upon the issuance by the Secretary of State of a certificate of revocation of dissolution, the revocation shall be effective

Revisor's Note:

No substantive change is intended except as described in the Revisor's Note to Section 11.201.

Revised Law:

Sec. 11.206. EFFECT OF REINSTATEMENT. When the reinstatement of a terminated entity takes effect:

(1) the existence of the terminated entity is considered to have continued without interruption from the date of termination; and

(2) the terminated entity may carry on its business as if the termination of its existence had not occurred.

Source Law:

TBCA 6.05.D

D. . . . the existence of the corporation shall be deemed to have continued without interruption after the issuance by the Secretary of State of the certificate of dissolution, the corporation may carry on its business as though voluntary dissolution proceedings had not occurred, and the existence of the corporation shall continue until the corporation is subsequently dissolved or otherwise ceases to exist pursuant to the provisions of this Act.

Revisor's Note:

No substantive change is intended except as described in the Revisor's Note to Section 11.201. The phrase in the source law beginning "and the existence of the corporation shall continue . . ." was omitted as unnecessary.

(Sections 11.207-11.250 reserved for expansion)

SUBCHAPTER F. INVOLUNTARY TERMINATION OF FILING ENTITY BY SECRETARY OF STATE

Revised Law:

Sec. 11.251. TERMINATION OF FILING ENTITY BY SECRETARY OF STATE. (a) If it appears to the secretary of state that, with respect to a filing entity, a circumstance described by Subsection (b) exists, the secretary of state may notify the entity of the circumstance by regular or certified mail addressed to the entity at the entity's registered office or principal place of business as shown on the records of the secretary of state.

(b) The secretary of state may terminate a filing entity's existence if the secretary finds that the entity has failed to, and, before the 91st day after the date notice was mailed has not corrected the entity's failure to:

(1) file a report within the period required by law or to pay a fee or penalty prescribed by law when due and payable;

(2) maintain a registered agent or registered office in this state as required by law; or

(3) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

(c) This subchapter shall not apply to real estate investment trusts.

Source Law:

TBCA 7.01.B, C(1)

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise

taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for the corporation's articles of incorporation or the initial franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes, or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.01.B, C(1)

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for its articles of incorporation, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and

the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

TRLPA 13.06(a) & (b)

Sec. 13.06. (a) A domestic or foreign limited partnership that fails to file a report required under Section 13.05 of this Act when due forfeits its right to transact business in this state.

(b) A forfeiture under this section takes effect without judicial ascertainment. . . .

TRLPA 13.08(a)

Sec. 13.08. (a) The secretary of state may cancel the certificate of a limited partnership, or the registration of a foreign limited partnership, if the limited partnership forfeits its right to transact business in this state under Section 13.06 of this Act and fails to revive that right under Section 13.07 of this Act. . . .

Revisor's Note:

Section 11.251 clarifies the authority of the Secretary of State to involuntarily terminate a filing entity. In addition to authorizing the Secretary of State to involuntarily terminate an entity for its failure to file a report or maintain a registered agent, Section 11.251 authorizes the Secretary of State to involuntarily terminate a filing entity for its failure to maintain a registered office address in this state, and for its failure to pay a fee required in connection with a filing of any instrument. Existing provisions in the TRLPA do not explicitly authorize the Secretary of State to cancel the certificate or registration of a limited partnership for its failure to maintain a registered agent although the entity is required to continuously maintain a registered agent and registered office address in this state. Section 11.251 would authorize the involuntary termination of a limited partnership on such grounds.

Section 11.251 eliminates the failure of an entity to pay franchise tax or a tax deposit as grounds for termination. Although such failure is a basis for termination in existing provisions of the TBCA, TNPCA, and TLLCA, the practice of the Secretary of State is to use the provisions of Chapter 171 of the Tax Code to effect a forfeiture of an entity's articles or certificate.

The source law requires the Secretary of State to provide the entity with a 90 day notice and cure period prior to taking action to involuntarily dissolve the entity for its failure to file a report or to maintain a registered agent. Section 11.251 would require a 90-day notice and cure period prior to termination under all circumstances specified in 11.251.

The source law in the TNPCA and TBCA requires advance notice of dissolution to be sent by certified mail to the entity's registered office, or to its principal place of business in Texas, or the last known address of one of its officers,

directors, or managers, or to any other known place of business of entity. The source law in the TRPA and TRLPA does not specifically require an advance notice. Section 11.251 requires the Secretary of State to provide notice by regular or certified mail to the entity's registered office address or principal place of business. Present practice of the Secretary of State is to mail notification to the addresses indicated in Section 11.251 and not to any other address.

Because real estate investment trusts are formed by filing a certificate of formation with a county clerk, Subchapter F does not apply to them. Subsection (c) of the revised law provides for that exclusion.

Revised Law:

Sec. 11.252. CERTIFICATE OF TERMINATION. (a) If termination of a filing entity's existence is required, the secretary of state shall:

(1) issue a certificate of termination; and

(2) deliver a certificate of termination by regular or certified mail to the filing entity at its registered office or principal place of business.

(b) The certificate of termination must state:

(1) that the filing entity has been involuntarily terminated;

and

(2) the date and cause of the termination.

(c) Except as otherwise provided by this chapter, the existence of the filing entity is terminated on the issuance of the certificate of termination by the secretary of state.

Source Law:

TBCA 7.01.C(2) & D

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of involuntary dissolution, which shall include the fact of such involuntary dissolution and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office, or to its principal place of business, or the last known address of one of its officers or directors, or

to any other known place of business of said corporation. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except for purposes otherwise provided by law.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.01.C(2), D

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of involuntary dissolution, which shall include the fact of such involuntary dissolution and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office, or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except for purposes otherwise provided by law.

TRLPA 13.06(b)

(b) . . . The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation that the right to transact business has been forfeited together with the date of forfeiture. Notice of the forfeiture shall be mailed to the limited partnership at:

- (1) the registered office of the limited partnership;
- (2) the last known address of the limited partnership; or
- (3) any other place of business of the limited partnership.

TRLPA 13.08(a)

(a) . . . The cancellation takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation of the cancellation and the date of cancellation.

Revisor's Note:

See Revisor's Note to Section 11.251. The revised law standardizes the actions necessary to effect the termination by the Secretary of State. The provisions in the TRLPA are not as detailed as in the TNPCA or TBCA, upon which the revised law is based. The TRLPA does not require the Secretary of State to issue a formal certificate of termination, as required by the revised law. Instead, the TRLPA merely requires the Secretary of State to note the termination on the Secretary's records.

Revised Law:

Sec. 11.253. REINSTATEMENT BY SECRETARY OF STATE AFTER INVOLUNTARY TERMINATION. (a) The secretary of state shall reinstate a filing entity that has been involuntarily terminated under this subchapter if the entity files a certificate of reinstatement in accordance with Chapter 4 and:

(1) the entity has corrected the circumstances that led to the involuntary termination and any other circumstances that may exist of the types described by Section 11.251 (b), including the payment of fees, interest, or penalties; or

(2) the secretary of state finds that the circumstances that led to the involuntary termination did not exist at the time of termination.

(b) A certificate of reinstatement filed under Subsection (a) must contain:

(1) the name of the filing entity;

(2) the filing number assigned by the filing officer to the entity;

(3) the effective date of the involuntary termination;

(4) a statement that the circumstances giving rise to the involuntary termination have been corrected; and

(5) the name of the entity's registered agent and the address of the entity's registered office.

(c) A certificate of reinstatement must be accompanied by each amendment to the entity's certificate of formation that is required by intervening events, including circumstances requiring an amendment to the filing entity's name as described in Section 11.203.

(d) If a filing entity is reinstated before the third anniversary of the date of its involuntary termination, the entity is considered to have continued in existence without interruption from the date of termination. The reinstatement shall have no effect on any issue of personal liability of the governing persons, officers or agents of the filing entity during the period between termination and reinstatement.

Source Law:

TBCA 7.01.E

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to the Secretary's satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. . . .

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between dissolution and reinstatement.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.01.E

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. . . .

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between dissolution and reinstatement.

TRLPA 13.09

Sec. 13.09. (a) A limited partnership whose certificate or registration has been canceled as provided by Section 13.08 of this Act may be relieved of the cancellation by filing the report required by Section 13.05, together with the filing fee for the report, a late fee of \$100, and a reinstatement fee of \$100.

(b) If the limited partnership complies with the fees required by Subsection (a) of this section, the secretary of state shall reinstate the certificate or registration of the limited partnership without judicial ascertainment. The secretary shall change the status of the limited partnership to active and note the reinstatement on the record kept in the secretary's office relating to the limited partnership. . .

Revisor's Note:

Section 11.253 permits the reinstatement of an involuntarily terminated entity upon the correction of the circumstances that led to the termination and the filing of a certificate of reinstatement. The source laws, other than the TRLPA, require an involuntarily dissolved entity to make its application for reinstatement within 36 months. The revised law permits reinstatement at any time in a manner similar to reinstatement procedures under the Tax Code after a forfeiture for nonpayment of taxes and similar to the TRLPA. The Tax Code and the TRLPA do not restrict the time within which an entity can reinstate. Thus, the lack of a time limit is not new for limited partnerships. However, although Section 11.253 eliminates the time restrictions for reinstatement found in the TNPCA and TBCA, an involuntarily terminated entity is considered to have continued in existence without interruption from the date of termination only when the certificate of reinstatement is filed before the third anniversary date of its involuntary termination. This retroactive effect is contained in the TBCA and TNPCA for corporations and also applies to limited liability companies under the TLLCA. The explicit retroactive effectiveness of the reinstatement in the revised law could be considered a clarification of what is implicit in the TRLPA.

Existing provisions in the TBCA, TNPCA, and TLLCA state that the reinstatement has no effect on the personal liability of a governing person, officer or agent during the period between dissolution and reinstatement. Subsection (d) of the revised law carries over this concept and extends its application to limited partnerships.

Revised Law:

Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING TAX FORFEITURE. A filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its certificate of formation.

Source Law:

TBCA 7.12. F(1)(e)

(e) whose charter was forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

Revisor's Note:

No substantive change is intended. Reference is made to Tax Code Sections 171.312 - 171.314 for provisions relating to forfeiture and reinstatement. The revised law defers to the Tax Code for reinstatement after a forfeiture under that Code.

(Sections 11.255-11.300 reserved for expansion)

SUBCHAPTER G. JUDICIAL WINDING UP AND TERMINATION

Revised Law:

Sec. 11.301. INVOLUNTARY WINDING UP AND TERMINATION OF FILING ENTITY BY COURT ACTION. (a) A court may enter a decree requiring winding up of a filing entity's business and termination of the filing entity's existence if, as the result of an action brought under Section 11.303, the court finds that one or more of the following problems exist:

(1) the filing entity or its organizers did not comply with a condition precedent to its formation;

(2) the certificate of formation of the filing entity or any amendment to the certificate of formation was fraudulently filed;

(3) a misrepresentation of a material matter has been made in an application, report, affidavit, or other document submitted by the filing entity under this code;

(4) the filing entity has continued to transact business beyond the scope of the purpose of the filing entity as expressed in its certificate of formation; or

(5) public interest requires winding up and termination of the filing entity because:

(A) the filing entity has been convicted of a felony or a high managerial agent of the filing entity has been convicted of a felony committed in the conduct of the filing entity's affairs;

(B) the filing entity or high managerial agent has engaged in a persistent course of felonious conduct; and

(C) termination is necessary to prevent future felonious conduct of the same character.

(b) Sections 11.302-11.307 do not apply to Subsection (a)(5).

Source Law:

TBCA 7.01.A, F & G

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that it is in default in any of the following particulars:

(1) The corporation or its incorporators have failed to comply with a condition precedent to incorporation; or

(2) The original articles of incorporation or any amendments thereof were procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

* * *

F. When a corporation is convicted of a felony or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this article.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.01.A, F & G

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office

of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that it is in default in any of the following particulars:

(1) The corporation or its incorporators have failed to comply with a condition precedent to incorporation; or

(2) The original articles of incorporation or any amendments thereof were procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

* * *

F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this article.

Revisor's Note:

Sections 11.301-11.311 and 11.315 of Subchapter G, which relate to the judicial winding up and termination of a filing entity, correspond, in general, to existing provisions found in the TBCA and TNPCA. The revised law makes these provisions applicable to limited partnerships.

Revised Law:

Sec. 11.302. NOTIFICATION OF CAUSE BY SECRETARY OF STATE. (a) The secretary of state shall provide to the attorney general:

(1) the name of a filing entity that has given cause under Section 11.301 for involuntary winding up of the entity's business and termination of the entity's existence; and

(2) the facts relating to the cause for the winding up and termination.

(b) When notice is provided under Subsection (a), the secretary of state shall notify the filing entity of the circumstances by writing sent to the entity at its registered office in this state. The notice must state that the secretary of state has given notice under Subsection (a) and the grounds for the notification. The secretary of state must record the date a notice required by this subsection is sent.

(c) A court shall accept a certificate issued by the secretary of state as to the facts relating to the cause for the winding up and termination and the sending of a notice under Subsection (b) as prima facie evidence of the facts stated in the certificate and the sending of the notice.

Source Law:

TBCA 7.02.A & B

A. The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations which have given cause for judicial dissolution of their charters or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every such certificate from the Secretary of State to the Attorney General shall be taken and received in all courts as prima facie evidence of the facts therein stated.

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

TNPCA 7.02.A & B

A. The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations which have given cause for judicial dissolution of their charters or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every such certificate from the Secretary of State to the Attorney General shall be taken and received in all courts as prima facie evidence of the facts therein stated.

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be

kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.303. FILING OF ACTION BY ATTORNEY GENERAL. The attorney general shall file an action against a filing entity in the name of the state seeking termination of the entity's existence if:

(1) the filing entity has not cured the problems for which winding up and termination is sought before the 31st day after the date the notice under Section 11.302(b) is mailed; and

(2) the attorney general determines that cause exists for the involuntary winding up of a filing entity's business and termination of the entity's existence under Section 11.301.

Source Law:

TBCA 7.02.C

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General shall then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

TNPCA 7.02.C

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General may then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.304. CURE BEFORE FINAL JUDGMENT. An action filed by the attorney general under Section 11.303 shall be abated if, before a district court renders judgment on the action, the filing entity:

(1) cures the problems for which winding up and termination is sought; and

(2) pays the costs of the action.

Source Law:

TBCA 7.02.D

D. If, after any such action is filed but before judgment is pronounced in the district court, the corporation against whom such action has been filed shall cure its default and pay the costs of such action, the action shall abate.

TNPCA 7.02.D

D. If, after any such action is filed but before judgment is pronounced in the district court, the corporation against whom such action has been filed shall cure its default and pay the costs of such action, the action shall abate.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.305. JUDGMENT REQUIRING WINDING UP AND TERMINATION. If a district court finds in an action brought under this subchapter that proper grounds exist under Section 11.301(a) for a winding up of a filing entity's business and termination of the filing entity's existence, the court shall:

(1) make findings to that effect; and

(2) subject to Section 11.306, enter a judgment not earlier than the fifth day after the date the court makes its findings.

Source Law:

TBCA 7.02.E

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall, without rendering or entering any judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. . . .

TNPCA 7.02.E

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall without rendering or entering any judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.306. STAY OF JUDGMENT. (a) If, in an action brought under this subchapter, a filing entity has proved by a preponderance of the evidence and obtained a finding that the problems for which the filing entity has been found guilty were not wilful or the result of a failure to take reasonable precautions, the entity may make a sworn application to the court for a stay of entry of the judgment to allow the filing entity a reasonable opportunity to cure the problems for which it has been found guilty. An application made under this subsection must be made not later than the fifth day after the date the court makes its findings under Section 11.305.

(b) After a filing entity has made an application under Subsection (a), a court shall stay the entry of the judgment if the court is reasonably satisfied after considering the application and evidence offered with respect to the application that the filing entity:

(1) is able and intends in good faith to cure the problems for which it has been found guilty; and

(2) has not applied for the stay without just cause.

(c) A court shall stay an entry of judgment under Subsection (b) for the period the court determines is reasonably necessary to afford the filing entity the opportunity to cure its problems if the entity acts with reasonable diligence. The court may not stay the entry of the judgment for longer than 60 days after the date the court's findings are made.

(d) The court shall dismiss an action against a filing entity that, during the period the action is stayed by the court under this section, cures the problems for which winding up and termination is sought and pays all costs accrued in the action.

(e) If a court finds that a filing entity has not cured the problems for which winding up and termination is sought within the period prescribed by Subsection (c), the court shall enter final judgment requiring a winding up of the filing entity's business.

Source Law:

TBCA 7.02.E

E. . . . If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good

faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

TNPCA 7.02.E

E. . . . If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

TLLCA 8.12.A

A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.307. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a trial court's findings against a filing entity under this subchapter shall remand the case to the

trial court with instructions to grant the filing entity an opportunity to cure the problems for which the entity has been found guilty if:

(1) the filing entity did not make an application to the trial court for stay of the entry of the judgment;

(2) the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause;

(3) the appellate court finds that the problems for which the filing entity has been found guilty are capable of being cured; and

(4) the filing entity has prayed for the opportunity to cure its problems in the appeal.

(b) The appellate court shall determine the period, which may not be longer than 60 days after the date the case is remanded to the trial court, to be afforded to a filing entity to enable the filing entity to cure its problems under Subsection (a).

(c) The trial court to which an action against a filing entity has been remanded under this section shall dismiss the action if, during the period prescribed by the appellate court for that conduct, the filing entity cures the problems for which winding up and termination is sought and pays all costs accrued in the action.

(d) If a filing entity has not cured the problems for which winding up and termination is sought within the period prescribed by the appellate court under Subsection (b), the judgment requiring winding up and termination shall become final.

Source Law:

TBCA 7.02.F

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

TNPCA 7.02.F

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied

that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

TLLCA 8.12.A

A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.308. JURISDICTION AND VENUE. (a) The attorney general shall bring an action for the involuntary winding up and termination of a filing entity under this subchapter in:

(1) a district court of the county in which the registered office or principal place of business of the filing entity in this state is located; or

(2) a district court of Travis County.

(b) A district court described by Subsection (a) has jurisdiction of the action for involuntary winding up and termination.

Source Law:

TBCA 7.03

Art. 7.03. Venue and Process

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. . . .

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a

limited liability company and its members, managers, and officers.

TNPCA 7.03

Art. 1396-7.03. Venue and Process

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships. The revised law expressly states that the district court has jurisdiction over the filing entity, which is implied in the source law.

Revised Law:

Sec. 11.309. PROCESS IN STATE ACTION. Citation in an action for the involuntary winding up and termination of a filing entity under this subchapter shall be issued and served as provided by law.

Source Law:

TBCA 7.03

Art. 7.03. Venue and Process

A. . . . Citation shall issue and be served as provided by law.
. . . .

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.03

Art. 1396-7.03. Venue and Process

A. . . . Citation shall issue and be served as provided by law. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.310. PUBLICATION OF NOTICE. (a) If process in an action under this subchapter is returned not found, the attorney general shall publish notice in a newspaper in the county in which the registered office of the filing entity in this state is located. The notice must contain:

- (1) a statement of the pendency of the action;
- (2) the title of the court;
- (3) the title of the action; and
- (4) the earliest date on which default judgment may be entered by the court.

(b) Notice under this section must be published at least once a week for two consecutive weeks beginning at any time after the citation has been returned.

(c) The attorney general may include in one published notice the name of each filing entity against which an action for involuntary winding up and termination is pending in the same court.

(d) Not later than the 10th day after the date notice under this section is first published, the attorney general shall send a copy of the notice to the filing entity at the filing entity's registered office in this state. A certificate from the attorney general regarding the sending of the notice is prima facie evidence that notice was sent under this section.

(e) Unless a filing entity has been served with citation, a default judgment may not be taken against the entity before the 31st day after the date the notice is first published.

Source Law:

TBCA 7.03

Art. 7.03. Venue and Process

A. . . . If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two successive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a

limited liability company and its members, managers, and officers.

TNPCA 7.03

Art. 1396-7.03. Venue and Process

A. . . . If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two consecutive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.311. ACTION ALLOWED AFTER EXPIRATION OF FILING ENTITY'S DURATION. The expiration of a filing entity's period of duration does not, by itself, create a vested right on the part of an owner or creditor of the filing entity to prevent an action by the attorney general for the involuntary winding up of the filing entity's business and termination of the filing entity's existence.

Source Law:

TBCA 7.12.E

E. . . . That expiration shall not of itself create any vested right on the part of any shareholder or creditor to prevent such an action. . . .

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.12.G

G. . . . That expiration shall not of itself create any vested right on the part of any member or creditor to prevent such an action. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.312. COMPLIANCE BY TERMINATED ENTITY. On the decree of a court requiring winding up of a filing entity's business, the filing entity shall comply with:

- (1) the requirements of the decree concerning the winding up process; and
- (2) Subchapter B to the extent it does not conflict with the decree.

Source Law:

New

Revisor's Note:

The revised law puts in express terms what is implied in the source law, namely that the filing entity must comply with a court-ordered winding up and must follow the legal requirements relating to the winding up process. Thus, the revised law creates a clear affirmative compliance duty.

Revised Law:

Sec. 11.313. TIMING OF TERMINATION. A court may enter a decree under Section 11.301 terminating the existence of a filing entity:

- (1) when the court considers it necessary or advisable; or
- (2) on completion of the winding up process.

Source Law:

TBCA 7.09

Art. 7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of its remaining property and assets distributed to its shareholders, or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree

dissolving the corporation, whereupon the existence of the corporation shall cease.

Revisor's Note:

The revised law is similar to the mandatory termination provisions found in TBCA 7.09 for liquidation of the assets and business of a corporation through a receiver. The revised law recognizes explicitly the power of a court to terminate the existence of a filing entity under Section 11.301 when necessary or advisable or on completion of the winding up process, which is implicit in the source law.

Revised Law:

Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF PARTNERSHIP OR LIMITED LIABILITY COMPANY. A district court in the county in which the registered office or principal place of a domestic partnership or limited liability company is located has jurisdiction to order the winding up and termination of the domestic partnership or limited liability company on application by:

(1) a partner in the partnership if the court determines that:

(A) the economic purpose of the partnership is likely to be unreasonably frustrated; or

(B) another partner has engaged in conduct relating to the partnership's business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(2) an owner of the partnership or limited liability company if the court determines that it is not reasonably practicable to carry on the entity's business in conformity with its governing documents.

Source Law:

TLLCA 6.02

Art. 6.02. A. On application by or for a member, a court of competent jurisdiction may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business of the limited liability company in conformity with its articles of organization and regulations.

TRPA 8.01(e)

(e) Judicial Decree. A judicial decree, on application by a partner, requires a winding up if the decree determines that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

TRLPA 8.02

Sec. 8.02. On application by or for a partner, a court of competent jurisdiction may decree dissolution of a limited partnership if the court determines that:

(1) the economic purpose of the limited partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the limited partnership business that makes it not reasonably practicable to carry on the business in limited partnership with that partner; or

(3) it is not reasonably practicable to carry on the business of the limited partnership in conformity with the partnership agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 11.315. FILING OF DECREE OF TERMINATION AGAINST FILING ENTITY.

(a) The clerk of a court that enters a decree terminating the existence of a filing entity shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section.

Source Law:

TBCA 7.10

Art. 7.10. Filing of Decree of Dissolution

A. In any case in which the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.10

Art. 1396-7.10. Filing of Decree of Dissolution

A. In any case in which the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of

such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

(Sections 11.316-11.350 reserved for expansion)

SUBCHAPTER H. CLAIMS RESOLUTION ON TERMINATION

Revised Law:

Sec. 11.351. LIABILITY OF TERMINATED ENTITY. A terminated filing entity is liable only for an existing claim.

Source Law:

TBCA 7.12.C

C. A corporation shall not be liable for any claim other than an existing claim. . . .

TLLCA 8.12.A

A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.12.C

C. A corporation is not liable for any claim other than an existing claim. . . .

Revisor's Note:

The provisions of Subchapter H, which relate to the resolution of claims upon termination, correspond, in general, to provisions found in the TBCA and TNPCA. The revised law makes these provisions applicable to limited partnerships.

Revised Law:

Sec. 11.352. DEPOSIT WITH COMPTROLLER OF AMOUNT DUE OWNERS AND CREDITORS WHO ARE UNKNOWN OR CANNOT BE LOCATED. (a) On the voluntary or involuntary termination of a domestic filing entity, the portion of the entity's assets distributable to creditors or owners who are unknown or cannot be found after the exercise of reasonable diligence by a person responsible for the distribution in liquidation of the domestic filing entity's assets must be reduced to cash and deposited as provided by Subsection (b).

(b) Money from assets liquidated under Subsection (a) shall be deposited with the comptroller in a special account to be maintained by the comptroller. The money must be accompanied by a statement to the comptroller containing:

(1) the name and last known address of each person who is known to be entitled to all or part of the account;

(2) the amount of each entitled person's distributive portion of the money; and

(3) other information about each person who is entitled to all or part of the money as the comptroller may reasonably require.

(c) The comptroller shall issue a receipt for money received under this section.

Source Law:

TBCA 7.11.A

A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the Comptroller, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the Comptroller may reasonably require, The Comptroller shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.11.A

A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member or other person who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the Comptroller, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the Comptroller may reasonably require, The Comptroller shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.353. DISCHARGE OF LIABILITY OF PERSON RESPONSIBLE FOR LIQUIDATION. A person responsible for the distribution in liquidation of a filing entity's assets will be released and discharged from further liability with respect to money received from the liquidation when the person deposits the money with the comptroller under Section 11.352.

Source Law:

TBCA 7.11.A

A. . . . whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. . . .

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.11.A

A. . . . whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.354. PAYMENT FROM ACCOUNT BY COMPTROLLER. (a) To claim money deposited in an account under Section 11.352, a person must submit to the comptroller satisfactory written proof of the person's right to the money not later than the seventh anniversary of the date the money was deposited with the comptroller.

(b) The comptroller shall issue a warrant drawn on the account created under Section 11.352 in favor of a person who meets the requirements for making a claim under Subsection (a) and in the amount to which the person is entitled.

Source Law:

TBCA 7.11.B

B. On receipt of satisfactory written proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the Comptroller shall issue proper warrant therefor in favor of the person or persons then entitled thereto. . . .

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.11.B

B. On receipt of satisfactory written proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the Comptroller of Public Accounts shall issue proper warrant therefor drawn on the State Treasury in favor of the person or persons then entitled thereto. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.355. NOTICE OF ESCHEAT; ESCHEAT. (a) If no claimant has made satisfactory proof of a right to the money within the period prescribed by Section 11.354(a), the comptroller shall publish in one issue of a newspaper of general circulation in Travis County a notice of the proposed escheat of the money.

(b) A notice published under Subsection (a) must contain:

(1) the name and last known address of any known creditor or owner entitled to the money;

(2) the amount of money deposited with the comptroller; and

(3) the name of the terminated filing entity from whose assets the money was derived.

(c) If no claimant makes satisfactory proof to the comptroller of a right to the money before the 61st day after the date notice under this section is published, the money automatically escheats to and becomes the property of the state and shall be deposited in the general revenue fund.

Source Law:

TBCA 7.11.B

B. . . . If no claimant has made satisfactory proof of right to such fund within seven (7) years from the time of such deposit the Comptroller shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor or shareholder apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.11.B

B. . . . If no claimant has made satisfactory proof of rights to such fund within seven (7) years from the time of such deposit the Comptroller shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor, member, or other person apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.356. LIMITED SURVIVAL AFTER TERMINATION. (a) Notwithstanding the termination of a domestic filing entity under this chapter, the terminated filing entity continues in existence until the third anniversary of the effective date of the entity's termination only for purposes of:

(1) prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated filing entity;

(2) permitting the survival of an existing claim by or against the terminated filing entity;

(3) holding title to and liquidating property that remained with the terminated filing entity at the time of termination or property that is collected by the terminated filing entity after termination;

(4) applying or distributing property, or its proceeds, as provided by Section 11.053; and

(5) settling affairs not completed before termination.

(b) A terminated filing entity may not continue its existence for the purpose of continuing the business or affairs for which the terminated entity was formed unless the terminated entity is reinstated under Subchapter E.

(c) If an action on an existing claim by or against a terminated filing entity has been brought before the expiration of the three-year period

after the date of the entity's termination and the claim was not extinguished under Section 11.359, the terminated filing entity continues to survive for purposes of:

(1) the action until all judgments, orders, and decrees have been fully executed; and

(2) the application or distribution of any property of the terminated filing entity as provided by Section 11.053 until the property has been applied or distributed.

Source Law:

TBCA 7.12.A & C

A. A dissolved corporation shall continue its corporate existence for a period of three years from the date of dissolution, for the following purposes:

(1) prosecuting or defending in its corporate name any action or proceeding by or against the dissolved corporation;

(2) permitting the survival of any existing claim by or against the dissolved corporation;

(3) holding title to and liquidating any properties or assets that remained in the dissolved corporation at the time of, or are collected by the dissolved corporation after, dissolution, and applying or distributing those properties or assets, or the proceeds thereof, as provided in Subsections (3) and (4) of Section A of Article 6.04 of this Act; and

(4) settling any other affairs not completed before dissolution.

However, a dissolved corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the dissolved corporation was organized.

* * *

C. . . . If an action or proceeding on an existing claim by or against a dissolved corporation is brought before the expiration of the three-year period following the date of dissolution and such existing claim was not extinguished pursuant to Section D of this Article, the dissolved corporation shall continue to survive (1) for purposes of that action or proceeding until all judgments, orders, and decrees therein have been fully executed, and (2) for purposes of applying or distributing any properties or assets of the dissolved corporation as provided in Subsections (3) and (4) of Section A of Article 6.04 of this Act until such properties or assets are so applied or distributed.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a

limited liability company and its members, managers, and officers.

TNPCA 7.12.A & C

A. A dissolved corporation shall continue its corporate existence for a period of three (3) years from the date of dissolution, for the following purposes:

(1) prosecuting or defending in its corporate name any action or proceeding by or against the corporation;

(2) permitting the survival of any remedy not otherwise barred by limitations available to or against the corporation, its officers, directors, members, or creditors, for any right or claim existing, or any liability incurred, before the dissolution;

(3) holding title to and liquidating any assets or property that remain in the corporation at the time of, or are collected by the corporation after, its dissolution, and applying or distributing those assets or properties, or the proceeds thereof, as provided in Subsection (3) of Section A of Article 6.04 of this Act; and

(4) settling any other affairs not completed before its dissolution.

However, such a dissolved corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the dissolved corporation was organized, except in the case of a corporation whose period of duration has expired and that has chosen to revive its existence as provided in this Act or a corporation that has been dissolved by the Secretary of State pursuant to Section B of Article 7.01 of this Act and that has been reinstated pursuant to Section E of Article 7.01 of this Act.

* * *

C. . . . If an action or proceeding on an existing claim by or against a dissolved corporation is brought within the period provided by this section and the existing claim is not extinguished under this article, the dissolved corporation continues to survive:

(1) for purposes of that action or proceeding until all judgments, orders, and decrees in that action or proceeding have been fully executed; and

(2) for purposes of applying or distributing any properties or assets of the dissolved corporation as provided in Article 6.02 of this Act, until the properties or assets are applied or distributed.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.357. GOVERNING PERSONS OF ENTITY DURING LIMITED SURVIVAL.

(a) Subject to the provisions of the title governing the terminated filing entity, during the three-year period that a terminated filing entity's existence is continued under Section 11.356, the governing persons of the terminated filing entity serving at the time of termination shall continue to manage the affairs of the terminated filing entity for the limited purposes specified by Section 11.356 and have the powers necessary to accomplish those purposes. The number of governing persons:

(1) may be reduced because of the death of a governing person; and

(2) may include successors to governing persons chosen by the other governing persons.

(b) In exercising powers prescribed under Subsection (a), a governing person:

(1) has the same duties to the terminated filing entity that the person had immediately before the termination; and

(2) is liable to the terminated filing entity for the person's actions taken after the entity's termination to the same extent that the person would have been liable had the person taken those actions before the termination.

Source Law:

TBCA 7.12.B

B. During the three-year period, the members of the board of directors of a dissolved corporation serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the dissolved corporation for the limited purposes specified in this Article and shall have the powers necessary to accomplish those purposes. In the exercise of those powers, the directors shall have the same duties to the dissolved corporation that they had immediately prior to the dissolution and shall be liable to the dissolved corporation for actions taken by them after the dissolution to the same extent that they would have been liable had those actions been taken by them prior to the dissolution.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.12.B

B. During the three-year period, the members of the board of directors of a dissolved corporation serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the dissolved corporation for the limited purpose or purposes specified in this Article, and shall have the powers necessary to accomplish those purposes, including the power to prosecute, pay, compromise, defend, and satisfy any action, claim, demand, or judgment by or against the dissolved corporation, and to administer, sell, and distribute in final liquidation any property or assets still remaining. In the exercise of those powers, the directors shall have the same duties to the dissolved corporation that they had immediately prior to the dissolution of the corporation and shall be liable to the dissolved corporation for actions taken by them after the dissolution to the same extent that they would have been liable had those actions been taken by them prior to the dissolution. Additional directors may be elected for purposes of this section in accordance with the procedures provided in the bylaws in effect before the dissolution.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships. The winding up process for a limited partnership is also governed by Sections 153.502 and 153.503, which control in case of any conflict with Section 11.357.

Revised Law:

Sec. 11.358. ACCELERATED PROCEDURE FOR EXISTING CLAIM RESOLUTION.

(a) A terminated filing entity may shorten the period for resolving a person's existing claim against the entity by giving notice by registered or certified mail, return receipt requested, to the claimant at the claimant's last known address that the claim must be resolved under this section.

(b) The notice required under Subsection (a) must:

(1) state the requirements of Subsections (c) and (d) for presenting a claim;

(2) provide the mailing address to which the person's claim against the terminated filing entity must be sent;

(3) state that the claim will be extinguished if written presentation of the claim is not received at the address given on or before the date specified in the notice, which may not be earlier than the 120th day after the date the notice is mailed to the person by the terminated filing entity; and

(4) be accompanied by a copy of this section of the code.

(c) To assert a claim, a person who is notified by a terminated filing entity that the person's claim must be resolved under this section

must present the claim in writing to the terminated filing entity at the address given by the entity in the notice.

(d) A claim presented under Subsection (c) must:

(1) contain the:

(A) identity of the claimant; and

(B) nature and amount of the claim; and

(2) be received by the terminated filing entity not later than the date specified in the notice under Subsection (b)(3).

(e) If a person presents a claim that meets the requirements of this section, the terminated filing entity to whom the claim is presented may give written notice to the person that the claim is rejected by the terminated entity.

(f) Notice under Subsection (e) must:

(1) be sent by registered or certified mail, return receipt requested, and addressed to the last known address of the person presenting the claim;

(2) state that the claim has been rejected by the terminated entity;

(3) state that the claim will be extinguished unless an action on the claim is brought:

(A) not later than the 180th day after the date the notice of rejection of the claim was mailed to the person; and

(B) not later than the third anniversary of the effective date of the entity's termination; and

(4) state the date on which notice of the claim's rejection was mailed and the effective date of the entity's termination.

Source Law:

TBCA 7.12.D

D. A dissolved corporation may give written notice to a person having or asserting an existing claim against the dissolved corporation to present such existing claim to the dissolved corporation in accordance with the notice. The notice shall be sent by registered or certified mail, return receipt requested, to the person having or asserting the existing claim at such person's last known address, and the notice shall:

(1) state that such person's claim against the dissolved corporation must be presented in writing to the dissolved corporation on or before the date stated in the notice, which shall be not earlier than 120 days after the date the notice is sent to such person;

(2) state that the written presentation of the claim must describe such claim in sufficient detail to reasonably inform the dissolved corporation of the identity of such person and of the nature and amount of the claim;

(3) state a mailing address where the written presentation of the person's claim against the dissolved corporation is to be sent;

(4) state that if the written presentation of the claim is not received at such address on or before the date stated in the notice, the claim will be extinguished; and

(5) be accompanied by a copy of this Section D.

If a written presentation of such person's claim against the dissolved corporation that meets the requirements of this section is received at the address of the dissolved corporation stated in the notice on or before the date stated in the notice, the dissolved corporation may thereafter give written notice to such person that such claim is rejected by the dissolved corporation. The notice shall be sent by registered or certified mail, return receipt requested, addressed to such person at such person's last known address, and the notice shall state:

(1) that such claim is rejected by the dissolved corporation;

(2) that such claim will be extinguished unless an action or proceeding on such claim is brought within 180 days after the date such notice of rejection was sent to such person and before the expiration of the three-year period following the date of dissolution; and

(3) the date such notice of rejection was sent and the date of dissolution. . . .

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.12.D-E

D. A dissolved corporation may give written notice to a person having or asserting an existing claim against the dissolved corporation to present the existing claim to the dissolved corporation in accordance with the notice. The notice must be sent by registered or certified mail, return receipt requested, to the person having or asserting the existing claim at the person's last known address, and must:

(1) state that the person's claim against the dissolved corporation must be presented in writing to the dissolved corporation on or before the date stated in the notice, which shall be not earlier than 120 days after the date the notice is sent to the person;

(2) state that the written presentation of the claim must describe the claim in sufficient detail to reasonably inform the dissolved corporation of the identity of the person and to the nature and amount of the claim;

(3) state a mailing address where the written presentation of the person's claim against the dissolved corporation is to be sent and state that if the written presentation of the claim is not received at that address on or before the date stated in the notice, the claim will be extinguished; and

(4) be accompanied by a copy of this section.

E. If a written presentation of a person's claim against the dissolved corporation that meets the requirements of Section D of this article has been received at the address of the dissolved corporation stated in the notice on or before the date stated in the notice, the dissolved corporation may give written notice to that person that the claim is rejected by the dissolved corporation. The notice of rejection must be sent by registered or certified mail, return receipt requested, addressed to the person at the person's last known address, and must state:

(1) that the claim is rejected by the dissolved corporation;

(2) that the claim will be extinguished unless an action or proceeding on the claim is brought within 180 days after the date the notice of rejection was sent to the person and before the third anniversary of the date of dissolution; and

(3) the date the notice of rejection was sent and the date of dissolution.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

Revised Law:

Sec. 11.359. EXTINGUISHMENT OF EXISTING CLAIM. (a) Except as provided by Subsection (b), an existing claim by or against a terminated filing entity is extinguished unless an action or proceeding is brought on the claim not later than the third anniversary of the date of termination of the entity.

(b) A person's claim against a terminated filing entity may be extinguished before the period prescribed by Subsection (a) if the person is notified under Section 11.358(a) that the claim will be resolved under Section 11.358 and the person:

(1) fails to properly present the claim in writing under Sections 11.358(c) and (d); or

(2) fails to bring an action on a claim rejected under Section 11.358(e) before:

(A) the 180th day after the date the notice rejecting the claim was mailed to the person; and

(B) the third anniversary of the effective date of the entity's termination.

Source Law:

TBCA 7.12C & D

C. . . . An existing claim by or against a dissolved corporation shall be extinguished unless an action or proceeding on such existing claim is brought before the expiration of the three-year period following the date of dissolution. . . .

D. . . . Such person's claim against the dissolved corporation shall be extinguished if (a) a written presentation of that claim meeting the requirements of this section is not received at the address of the dissolved corporation stated in the notice to such person on or before the date stated in the notice or (b) an action or proceeding on such claim is not brought within 180 days after the date a notice of rejection was sent to such person and before the expiration of the three-year period following the date of dissolution.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.12.C & F

C. . . . An existing claim by or against a dissolved corporation is extinguished unless an action or proceeding on the existing claim is brought before the third anniversary of the date of dissolution. . . .

F. A person's claim against a dissolved corporation is extinguished if:

(1) a written presentation of that claim meeting the requirements of this article is not received at the address of the dissolved corporation stated in the notice to the person on or before the date stated in the notice; or

(2) an action or proceeding on the claim is not brought within 180 days after the date a notice of rejection was sent to the person and before the third anniversary of the date of dissolution.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships.

(Sections 11.360-11.400 reserved for expansion)

SUBCHAPTER I. RECEIVERSHIP

Revised Law:

Sec. 11.401. CODE GOVERNS. A receiver may be appointed for a domestic entity or for a domestic entity's property or business only as provided for and on the conditions set forth in this code.

Source Law:

TBCA 7.07.A

A. No receiver shall be appointed for any corporation to which this Act applies or for any of its assets or for its business except as provided for and on the conditions set forth in this Act. . . .

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.A

A. No receiver shall be appointed for any corporation in which this Act applies or for any of its assets or for its business except as provided for and on the conditions set forth in this Act. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships. The "only" language of Section 11.401 creates a facial conflict between Chapter 11 and the receivership provisions of Texas Civil Practices & Remedies Code Chapter 64. The TCPRC provisions are very similar in some respects and different in others. Resolution of the conflict between the two groups of statutes is determined by whether the conflict is irreconcilable or by the principles dealing with conflicting or irreconcilable statutes. These include Code Construction Act, Government Code Chapter 311 and Government Code Chapter 312. Among these principles are primacy of special statutes over general and primacy of later statutes over earlier. Also important are harmonization if possible of the potentially conflicting statutes, and consideration of legislative intent.

Revised Law:

Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) A court that has subject matter jurisdiction over specific property of a domestic or foreign

entity that is located in this state and is involved in litigation has jurisdiction to appoint a receiver for that property.

(b) A district court in the county in which the registered office or principal place of business of a domestic entity is located has jurisdiction to:

(1) appoint a receiver for the property and business of a domestic entity for the purpose of rehabilitating the entity; or

(2) order the liquidation of the property and business of a domestic entity and appoint a receiver to effect that liquidation.

Source Law:

TBCA 7.04.A

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation,

TBCA 7.05.A

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located,

TBCA 7.06.A

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and business of the corporation and may appoint a receiver to effect such liquidation,

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.04.A

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation,

TNPCA 7.05.A

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located,

TNPCA 7.06.A

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and affairs of the corporation and may appoint a receiver to effect such liquidation,

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover limited partnerships and to authorize jurisdiction for a district court in the county in which the principal place of business of the entity is located.

Revised Law:

Sec. 11.403. APPOINTMENT OF RECEIVER FOR SPECIFIC PROPERTY. (a) Subject to Subsection (b), and on the application of a person whose right to or interest in any property or fund or the proceeds from the property or fund is probable, a court that has jurisdiction over specific property of a domestic or foreign entity may appoint a receiver in an action:

- (1) by a vendor to vacate a fraudulent purchase of the property;
 - (2) by a creditor to subject the property or fund to the creditor's claim;
 - (3) between partners or others jointly owning or interested in the property or fund;
 - (4) by a mortgagee of the property for the foreclosure of the mortgage and sale of the property, when:
 - (A) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or
 - (B) it appears that the mortgage is in default and that the property is probably insufficient to discharge the mortgage debt; or
 - (5) in which receivers for specific property have been previously appointed by courts of equity.
- (b) A court may appoint a receiver for the property or fund under Subsection (a) only if:
- (1) with respect to an action brought under Subsection (a)(1), (2), or (3), it is shown that the property or fund is in danger of being lost, removed, or materially injured;
 - (2) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property or fund and avoid damage to interested parties;
 - (3) all other requirements of law are complied with; and
 - (4) the court determines that other available legal and equitable remedies are inadequate.

(c) The court appointing a receiver under this section has and shall retain exclusive jurisdiction over the specific property placed in receivership. The court shall determine the rights of the parties in the property or its proceeds.

(d) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, and the receiver shall redeliver to the domestic entity all of the property remaining in receivership.

Source Law:

TBCA 7.04

Art. 7.04. Appointment of Receiver for Specific Corporate Assets

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

(1) In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) In any other actions where receivers for specific assets have heretofore been appointed by the usages of the court of equity.

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.04

Art. 1396-7.04. Appointment of Receiver for Specific Corporate Assets

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

(1) In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition to the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) In any other actions where receivers for specific assets have heretofore been appointed by the usage of the court of equity.

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships. The phrase "the condition of the mortgage has not been performed" in the source law is modernized in the revised law to read "the mortgage is in default." Subsection (d) of the revised law has no express counterpart in but may be implied from the source law. It is similar to source law from which Section 11.404(c) of the revised law is derived in the context of receivers appointed to rehabilitate corporations.

Revised Law:

Sec. 11.404. APPOINTMENT OF RECEIVER TO REHABILITATE DOMESTIC ENTITY. (a) Subject to Subsection (b), a court that has jurisdiction over

the property and business of a domestic entity under Section 11.402(b) may appoint a receiver for the entity's property and business if:

(1) in an action by an owner or member of the domestic entity, it is established that:

(A) the entity is insolvent or in imminent danger of insolvency;

(B) the governing persons of the entity are deadlocked in the management of the entity's affairs, the owners or members of the entity are unable to break the deadlock, and irreparable injury to the entity is being suffered or is threatened because of the deadlock;

(C) the actions of the governing persons of the entity are illegal, oppressive, or fraudulent;

(D) the property of the entity is being misapplied or wasted; or

(E) with respect to a for-profit corporation, the shareholders of the entity are deadlocked in voting power and have failed, for a period of at least two years, to elect successors to the governing persons of the entity whose terms have expired or would have expired on the election and qualification of their successors;

(2) in an action by a creditor of the domestic entity, it is established that:

(A) the entity is insolvent, the claim of the creditor has been reduced to judgment, and an execution on the judgment was returned unsatisfied; or

(B) the entity is insolvent and has admitted in writing that the claim of the creditor is due and owing; or

(3) in an action other than an action described by Subdivision (1) or (2), courts of equity have traditionally appointed a receiver.

(b) A court may appoint a receiver under Subsection (a) only if:

(1) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the domestic entity and avoid damage to interested parties;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.403, are inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

Source Law:

TBCA 7.05

Art. 7.05. Appointment of Receiver to Rehabilitate Corporation

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve the assets and business of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver for specific assets of the corporation, are determined by the court to be inadequate, and only in the following instances:

(1) In an action by a shareholder when it is established:

(a) That the corporation is insolvent or in imminent danger of insolvency; or

(b) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(c) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(d) That the corporate assets are being misapplied or wasted.

(e) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

(2) In an action by a creditor when it is established:

(a) That the corporation is insolvent and the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(b) That the corporation is insolvent and the corporation has admitted in writing that the claim of the creditor is due and owing.

(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity.

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to

redeliver to the corporation all its remaining properties and assets.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.05

Art. 1396-7.05. Appointment of Receiver to Rehabilitate Corporation

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve the assets and affairs of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver for specific assets of the corporation, are determined by the court to be inadequate, and only in the following instances:

(1) In an action by a member when it is established:

(a) That the corporation is insolvent or in imminent danger of insolvency; or

(b) That the directors are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(c) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(d) That the corporate assets are being misapplied or wasted.

(2) In an action by a creditor when it is established:

(a) That the corporation is insolvent and the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(b) That the corporation is insolvent and the corporation has admitted in writing that the claim of the creditor is due and owing.

(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity.

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the

directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.405. APPOINTMENT OF RECEIVER TO LIQUIDATE DOMESTIC ENTITY; LIQUIDATION. (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under Section 11.402(b) may order the liquidation of the property and business of the domestic entity and may appoint a receiver to effect the liquidation:

(1) when an action has been filed by the attorney general under this chapter to terminate the existence of the entity and it is established that liquidation of the entity's business and affairs should precede the entry of a decree of termination;

(2) on application of the entity to have its liquidation continued under the supervision of the court;

(3) if the entity is in receivership and the court does not find that any plan presented before the first anniversary of the date the receiver was appointed is feasible for remedying the condition requiring appointment of the receiver;

(4) on application of a creditor of the entity if it is established that irreparable damage will ensue to the unsecured creditors of the domestic entity as a class, generally, unless there is an immediate liquidation of the property of the domestic entity; or

(5) on application of a member or director of a nonprofit corporation or cooperative association and it appears the entity is unable to carry out its purposes.

(b) A court may order a liquidation and appoint a receiver under Subsection (a) only if:

(1) the circumstances demand liquidation to avoid damage to interested persons;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity and appointment of a receiver to rehabilitate the domestic entity, are inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

Source Law:

TBCA 7.06

Art. 7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and business of the corporation and may appoint a receiver to effect such liquidation, whenever circumstances demand liquidation in order to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver of specific assets of the corporation and appointment of a receiver to rehabilitate the corporation, are determined by the court to be inadequate and only in the following instances:

(1) When an action has been filed by the Attorney General, as provided in this Act, to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(3) If the corporation is in receivership and no plan for remedying the condition of the corporation requiring appointment of the receiver, which the court finds to be feasible, has been presented within twelve (12) months after the appointment of the receiver.

(4) Upon application of any creditor if it is established that irreparable damage will ensue to the unsecured creditors of the corporation, generally, as a class, unless there be an immediate liquidation of the assets of the corporation.

B. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.06.A & C

Art. 1396-7.06. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation and Receiverships Therefor

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of

the assets and affairs of the corporation and may appoint a receiver to effect such liquidation, whenever circumstances demand liquidation in order to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver of specific assets of the corporation and appointment of a receiver to rehabilitate the corporation, are determined by the court to be inadequate and only in the following instances:

(1) When an action has been filed by the Attorney General, as provided in this Act, to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

(2) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(3) If the corporation is in receivership and no plan for remedying the condition of the corporation requiring appointment of the receiver, which the court finds to be feasible, has been presented within twelve (12) months after the appointment of the receiver.

(4) Upon application of any creditor if it is established that irreparable damage will ensue to the unsecured creditors of the corporation, generally, as a class, unless there be an immediate liquidation of the assets of the corporation.

(5) Upon application by a member or director when it is made to appear that the corporation is unable to carry out its purposes.

* * *

C. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and the officers, the receiver being directed to re-deliver to the corporation all its remaining properties and assets.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.406. RECEIVERS: QUALIFICATIONS, POWERS, AND DUTIES. (a) A receiver appointed under this chapter:

(1) must be an individual citizen of the United States or an entity authorized to act as receiver;

(2) shall give a bond in the amount required by the court and with any sureties as may be required by the court;

(3) may sue and be sued in the receiver's name in any court;

(4) has the powers and duties provided by other laws applicable to receivers; and

(5) has the powers and duties that are stated in the order appointing the receiver or that the appointing court:

(A) considers appropriate to accomplish the objectives for which the receiver was appointed; and

(B) may increase or diminish at any time during the proceedings.

(b) To be appointed a receiver under this chapter, a foreign entity must be registered to transact business in this state.

Source Law:

TBCA 7.07.A-B

A. . . . A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be accorded such other powers and duties as the court shall deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual powers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.A-B

A. . . . A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be accorded such other powers and duties as the court shall

deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual powers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

Revisor's Note:

The revised law expands the type of entities that may act as a receiver. The source law limited the receiver to individuals and corporations authorized to act as receivers. The revised law allows as a receiver any other entity that is authorized to act as a receiver.

Revised Law:

Sec. 11.407. COURT-ORDERED FILING OF CLAIMS. (a) In a proceeding involving a receivership of the property or business of a domestic entity, the court may require all claimants of the domestic entity to file with the clerk of the court or the receiver, in the form provided by the court, proof of their respective claims under oath.

(b) A court that orders the filing of claims under Subsection (a) shall:

(1) set a date, which may not be earlier than four months after the date of the order, as the last day for the filing of those claims; and

(2) prescribe the notice that shall be given to claimants of the date set under Subdivision (1).

(c) Before the expiration of the period under Subsection (b) for the filing of claims, a court may extend the period for the filing of claims to a later date.

(d) A court may bar a claimant who fails to file a proof of claim during the period authorized by the court from participating in the distribution of the property of the domestic entity unless the claimant presents to the court a justifiable excuse for its delay in filing. A court may not order or effect a discharge of a claim of the claimant described by this subsection.

Source Law:

TBCA 7.07.C

C. In proceedings involving any receivership of the assets or business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs of their respective claims under oath. If the court requires the filing of claims, it shall fix a date as the last day for the filing thereof, which shall be not less than four months from the date of the order, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file

proofs of claim on or before the date fixed therefor may be barred, by order of court (unless presenting to the court a justifiable excuse for delay in the filing), from participating in the distribution of the assets of the corporation; but no discharge shall be decreed or effected.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.C

C. In proceedings involving any receivership of the assets or business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs of their respective claims under oath. If the court requires the filing of claims, it shall fix a date as the last day for the filing thereof, which shall be not less than four months from the date of the order, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date fixed therefor may be barred, by order of court (unless presenting to the court a justifiable excuse for delay in the filing), from participating in the distribution of the assets of the corporation but no discharge shall be decreed or effected.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.408. SUPERVISING COURT; JURISDICTION; AUTHORITY. (a) A court supervising a receivership under this subchapter may, from time to time:

(1) make allowances to a receiver or attorney in the proceeding; and

(2) direct the payment of a receiver or attorney from the property of the domestic entity that is within the scope of the receivership or the proceeds of any sale or disposition of that property.

(b) A court that appoints a receiver under this subchapter for the property or business of a domestic entity has exclusive jurisdiction over the domestic entity and all of its property, regardless of where the property is located.

Source Law:

TBCA 7.07.D, E

D. The court shall have power from time to time to make allowances to the receiver or receivers and to attorneys in the

proceeding, and to direct the payment thereof out of the assets of the corporation within the scope of the receivership or the proceeds of any sale or disposition of such assets.

E. A court authorized to appoint a receiver for a corporation to which this Act applies, and no other court in this State, shall be authorized to appoint a receiver for the corporation or its assets and business; when such a court does appoint a receiver, as authorized by this Act, for the corporation or its assets and business, that court shall have exclusive jurisdiction of the corporation and all its properties, wherever situated.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.D, E

D. The court shall have power from time to time to make allowances to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation within the scope of the receivership or the proceeds of any sale or disposition of such assets.

E. A court authorized to appoint a receiver for a corporation to which this Act applies, and no other court in this State, shall be authorized to appoint a receiver for the corporation or its assets and business; when such a court does appoint a receiver, as authorized by this Act, for the corporation or its assets and business, that court shall have exclusive jurisdiction of the corporation and all its properties, wherever situated.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.409. ANCILLARY RECEIVERSHIPS OF FOREIGN ENTITIES. (a) Notwithstanding any provision of this code to the contrary, a district court in the county in which the registered office of a foreign entity doing business in this state is located has jurisdiction to appoint an ancillary receiver for the property and business of that entity when the court determines that circumstances exist to require the appointment of an ancillary receiver.

(b) A receiver appointed under Subsection (a) serves ancillary to a receiver acting under orders of an out-of-state court that has jurisdiction to appoint a receiver for the entity.

Source Law:

TBCA 7.07.F

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. . . .

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.F

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. . . .

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.410. RECEIVERSHIP FOR ALL PROPERTY AND BUSINESS OF FOREIGN ENTITY. (a) A district court may appoint a receiver for all of the property, in and outside this state, of a foreign entity doing business in this state and its business if the court determines, in accordance with the ordinary usages of equity, that circumstances exist that necessitate the appointment of a receiver even if a receiver has not been appointed by another court.

(b) The appointing court shall convert a receivership created under Subsection (a) into an ancillary receivership if the appointing court determines an ancillary receivership is appropriate because a court in another state has ordered a receivership of all property and business of the entity.

Source Law:

TBCA 7.07.F

F. . . . Moreover, such district court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business, of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other State, providing for a receivership of all assets and business of such corporation.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.07.F

F. . . . Moreover, such district court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such corporation.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.411. GOVERNING PERSONS AND OWNERS NOT NECESSARY PARTIES DEFENDANT. Governing persons and owners or members of a domestic entity are not necessary parties to an action for a receivership or liquidation of the property and business of a domestic entity unless relief is sought against those persons individually.

Source Law:

TBCA 7.08

Art. 7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings

A. It shall not be necessary to make shareholders parties to any action or proceeding for a receivership or liquidation of

the assets and business of a corporation unless relief is sought against them personally.

TLLCA 8.12.A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.08

Art. 1396-7.08. Directors and Members Not Necessary Parties Defendant to Receivership or Liquidation Proceedings

A. It shall not be necessary to make directors or members parties to any action or proceeding for involuntary dissolution, receivership or liquidation of the assets and business of a corporation unless relief is sought against them personally.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.412. DECREE OF INVOLUNTARY TERMINATION. In an action to liquidate the property and business of a domestic entity, the court shall enter a decree terminating the existence of the entity:

(1) when the costs and expenses of the action and all obligations and liabilities of the domestic entity have been paid and discharged or adequately provided for and all of the entity's remaining property has been distributed to its owners and members; or

(2) if the entity's property is not sufficient to discharge the costs and other expenses of the action and all obligations and liabilities of the entity, when all the property of the entity has been applied toward their payment.

Source Law:

TBCA 7.09

Art. 7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of its remaining property and assets distributed to its shareholders, or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

TLLCA 8.12A

Art. 8.12. A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

TNPCA 7.09

Art. 1396-7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged, or adequate provision has been made for the discharge, and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the corporation shall cease to exist.

Revisor's Note:

No substantive change is intended, other than extending the revised law to cover partnerships.

Revised Law:

Sec. 11.413. SUPPLEMENTAL PROVISIONS FOR APPLICATION OF PROCEEDS FROM LIQUIDATION OF NONPROFIT CORPORATION. (a) In proceedings under Section 11.405, the property of a nonprofit corporation or the proceeds resulting from a sale, conveyance, or other disposition of its property shall be applied to:

(1) pay, satisfy, and discharge all costs and expenses of the court proceedings and all liabilities and obligations of the nonprofit corporation; or

(2) make adequate provision for the payment, satisfaction, and discharge of the costs, expenses, liabilities, or obligations described by Subdivision (1).

(b) Any property remaining after application is made under this section must be applied and distributed in the manner provided by Section 22.304.

Source Law:

TNPCA 7.06.B

B. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid,

satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Unless provided otherwise by a provision of the corporation's articles of incorporation that refers to this subsection, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1954 (26 U.S.C. Section 501(c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1954 (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute. The distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

Revisor's Note:

No substantive change is intended.