

TITLE 3. LIMITED LIABILITY COMPANIES

CHAPTER 101. LIMITED LIABILITY COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law:

Sec. 101.001. DEFINITIONS. In this title:

(1) "Company agreement" means any agreement, written or oral, of the members concerning the affairs or the conduct of the business of a limited liability company. A company agreement of a limited liability company having only one member is not unenforceable because only one person is a party to the company agreement.

(2) "Foreign limited liability company" or "foreign company" means a limited liability company formed under the laws of a jurisdiction other than this state.

(3) "Limited liability company" or "company" means a domestic limited liability company subject to this title.

Source Law:

New and TLLCA 1.02.A(3) & (9)

(3) "Limited Liability Company" or "Company" means a limited liability company organized and existing under this chapter.

(9) "Foreign Limited Liability Company" means an entity formed under the laws of a jurisdiction other than this state (a) that is characterized as a limited liability company by such laws or (b) although not so characterized by such laws, that elects to procure a certificate of authority pursuant to Article 7.01 of this act, that is formed under laws which provide that some or all of the persons entitled to receive a distribution of the assets thereof upon the entity's dissolution or otherwise or to exercise voting rights with respect to an interest in the entity shall not be liable for the debts, obligations or liabilities of the entity and which is not eligible to become authorized to do business in this state under any other statute.

Revisor's Note:

The revised law adds a definition of "company agreement" and simplifies the definition of a "foreign limited liability company."

"Company agreement" replaces the term "regulations" used in the TLLCA. This change was intended to emphasize the underlying contractual nature of this governing document for a limited liability company and to make the terminology used under Texas law more consistent with the terminology used under laws governing limited liability companies in other states. The Code defines "company agreement" in Section 100.001(2). This definition is based upon the definition of a partnership

agreement in the TRPA and TRLPA and is similar to the definition of a limited liability company agreement under Delaware law. It is consistent with the treatment of regulations under the TLLCA although the TLLCA does not contain an actual definition of the term "regulations." The Code definition recognizes, as does the TLLCA with respect to regulations (see TLLCA 2.22.A(3)), that the company agreement may be oral and clarifies that a company agreement of a single member limited liability company is not unenforceable because only one member is a party to the agreement. The TLLCA has permitted single member limited liability companies from its inception, and the language in Section 100.001(2) makes clear that the change in terminology from "regulations" to "company agreement" does not imply that there must be more than one party to this governing document.

The revised law simplifies the definition of a foreign limited liability company to make it parallel the "foreign corporation" definitions in Chapters 21 and 22. The TLLCA broadly defines foreign liability company to include any foreign entity whose owners are not liable for the debts, obligations or liabilities of the entity. Thus, foreign limited liability entities, for example business trusts, which have no counterpart in existing Texas statutes can qualify to do business as limited liability companies under the TLLCA. Under Chapter 9 of the revised law, these types of foreign entities can register directly to transact business in Texas. Therefore, the broader definition of limited liability company currently found in the TLLCA is not needed in the revised law. See Revisor's Note to Section 9.001.

(Sections 101.002-101.050 reserved for expansion)

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Revised Law:

Sec. 101.051. CERTAIN PROVISIONS CONTAINED IN CERTIFICATE OF FORMATION. (a) A provision that may be contained in the company agreement of a limited liability company may alternatively be included in the certificate of formation of the company as provided by Section 3.005(b).

(b) A reference in this title to the company agreement of a limited liability company includes any provision contained in the company's certificate of formation instead of the company agreement as provided by Subsection (a).

Source Law:

TLLCA 2.09.A

A. . . .Any provision of this Act subject to variation or modification by the regulations of a limited liability company is also subject to variation or modification by the articles of organization of the limited liability company.

TLLCA 3.02.A(9)

A. The initial Articles of Organization shall set forth:

* * *

(9) Any other provisions, not inconsistent with law, that the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions that under this Act are permitted to be set out in the regulations of the limited liability company.

Revisor's Note:

No substantive change is intended. The revised law incorporates the new terminology of the Code by referring to the "company agreement" and "certificate of formation" rather than the "regulations" and "articles of organization."

Revised Law:

Sec. 101.052. COMPANY AGREEMENT. (a) Except as provided by Section 101.054, the company agreement of a limited liability company governs:

(1) the relations among members, managers, and officers of the company, assignees of membership interests in the company, and the company itself; and

(2) other internal affairs of the company.

(b) To the extent that the company agreement of a limited liability company does not otherwise provide, this title and the provisions of Title 1 applicable to a limited liability company govern the internal affairs of the company.

(c) Except as provided by Section 101.054, a provision of this title or Title 1 that is applicable to a limited liability company may be waived or modified in the company agreement of a limited liability company.

(d) The company agreement may contain any provisions for the regulation and management of the affairs of the limited liability company not inconsistent with law or the certificate of formation.

Source Law:

TLLCA 2.09.A

A. The members of a limited liability company have the power to adopt, alter, amend, or repeal the regulations of a limited liability company. The articles of organization or regulations may provide that the manager or managers also have the power to adopt, alter, amend, or repeal the regulations, in whole or in part. Regulations may provide that they may not, in whole or specified part, be altered, amended, or repealed by the managers. The regulations may contain any provisions for the regulation and management of the affairs of the limited liability company not inconsistent with law or the articles of organization.

Revisor's Note:

The most significant change in Title 3 from the TLLCA was a change in the structure of how the provisions of the limited liability company statute are applied. The TLLCA contained numerous provisions that were expressly qualified with the language "unless otherwise provided in the articles of organization or regulations," or similar limitations. In the interest of clarity and economy of language, the Code takes the approach stated in Section 101.052 that, except as provided in Section 101.054, every provision of the Code governing limited liability companies may be waived or modified by the company agreement of a limited liability company, and that the terms of the company agreement will, with that qualification, take precedence over the terms of the Code. In the absence of a governing provision in the company agreement, the provisions of the Code will govern as a "default" provision. This order of precedence is also reflected by Section 101.252.

Because of the reversal of the prior assumption that each provision of the limited liability company statute was mandatory (unless expressly qualified) to the new assumption in Sections 101.052 and 101.054 that most provisions of the Code governing limited liability companies may be waived or modified, a number of the provisions of Title 3 are now stated in such a way that the new provision appears to be the converse of the corresponding provision under the TLLCA. But because the actual effect of the operation of Section 101.052, Section 101.054 and the provisions in question is the same as existing law in most cases, these reversals in the *form* of provisions are not noted separately below unless there is actually a substantive change from existing law as a result of the reversal. One example of a change in the way a provision is stated without a substantive change in the law is found in the rewording of TLLCA Art. 5.05 to Section 101.107.

In some cases, however, the reversal of how Code sections are stated resulted in a particular section being redrafted as a default rule where there had been none before.

Section 101.052 represents a change from existing law in two respects: first, the change in structure of application of the statute described above, and second, a change of the name of the governing document for a limited liability company other than its certificate of formation (articles of organization under existing law) to "company agreement" rather than "regulations," the term used under prior law. See Revisor's Note to Section 101.001.

Revised Law:

Sec. 101.053. AMENDMENT OF COMPANY AGREEMENT. The company agreement of a limited liability company may be amended only if each member of the company consents to the amendment.

Source Law:

TLLCA 2.09.B

B. Unless otherwise provided in the articles of organization or regulations, adoption, alteration, amendment, or repeal of the regulations of a limited liability company requires the affirmative vote, approval, or consent of all the members or, if the manager or managers have the power to adopt, alter, amend, or repeal the regulations of a limited liability company, the affirmative vote, approval, or consent of all the managers.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052 explaining the change in structure of the Code.

Revised Law:

Sec. 101.054. WAIVER OR MODIFICATION OF CERTAIN STATUTORY PROVISIONS PROHIBITED; EXCEPTIONS. (a) Except as provided by this section, the following provisions may not be waived or modified in the company agreement of a limited liability company:

- (1) this section;
- (2) Section 101.101(b), 101.206, 101.501, or 101.502;
- (3) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;
- (4) Chapter 2, except that Section 2.104(c)(2), 2.104(c)(3), or 2.113 may be waived or modified in the company agreement;
- (5) Chapter 3, except that Subchapters C and E may be waived or modified in the company agreement; or
- (6) Chapter 4, 5, 7, 10, 11, or 12, other than Section 11.056.

(b) A provision listed in Subsection (a) may be waived or modified in the company agreement if the provision that is waived or modified authorizes the limited liability company to waive or modify the provision in the company's governing documents.

(c) A provision listed in Subsection (a) may be modified in the company agreement if the provision that is modified specifies:

- (1) the person or group of persons entitled to approve a modification; or
- (2) the vote or other method by which a modification is required to be approved.

(d) A provision in this title or in that part of Title 1 applicable to a limited liability company that grants a right to a person, other than a member, manager, officer, or assignee of a membership interest in a limited liability company, may be waived or modified in the company agreement of the company only if the person consents to the waiver or modification.

Source Law:

New

Revisor's Note:

Section 101.054 lists the provisions of the Code that may not be waived or modified by the company agreement of a limited liability company, or may be waived or modified only in certain circumstances. This section represents a change in form and structure of the law governing limited liability companies, but does not result in a substantive change in existing law for the most part. See Revisor's Note to Section 101.052. Subsection (d) of the revised law clarifies that the rights of third parties cannot be changed by the company agreement without their consent.

(Sections 101.055-101.100 reserved for expansion)

SUBCHAPTER C. MEMBERSHIP

Revised Law:

Sec. 101.101. MEMBERS REQUIRED. (a) A limited liability company may have one or more members. Except as provided by this section, a limited liability company must have at least one member.

(b) A limited liability company that has managers is not required to have any members during a reasonable period between the date the company is formed and the date the first member is admitted to the company.

(c) A limited liability company is not required to have any members during the period between the date the continued membership of the last remaining member of the company is terminated and the date the agreement to continue the company described by Section 11.056 is executed.

Source Law:

New and TLLCA 4.01.A

A. A limited liability company may have one or more members.

. . .

Revisor's Note:

The revised law clarifies that there are certain times when a limited liability company may be in compliance with the Code without members. These times include the period between the formation date of a manager-managed limited liability company and the admission of its first member, as long as that time is reasonable, and the period between the date of termination of

the last remaining member and the date of an agreement to continue the company.

Revised Law:

Sec. 101.102. QUALIFICATION FOR MEMBERSHIP. (a) A person may be a member of or acquire a membership interest in a limited liability company unless the person lacks capacity apart from this code.

(b) A person is not required, as a condition to becoming a member of or acquiring a membership interest in a limited liability company, to:

(1) make a contribution to the company;

(2) otherwise pay cash or transfer property to the company;

or

(3) assume an obligation to make a contribution or otherwise pay cash or transfer property to the company.

Source Law:

New and TLLCA 4.01.C

C. Any person may be a member unless the person lacks capacity apart from this Act.

Revisor's Note:

Subsection (a) of the revised law provides that a person may be a member of or acquire a membership interest in a limited liability company unless the person lacks capacity apart from the Code. The revised law clarifies that the capacity to become a member also applies to the acquisition of membership interests, which can be implied in the source law. In addition, Subsection (b) provides that a person is not required to make a contribution, otherwise pay cash or contribute property, to the limited liability company, or assume an obligation to do so, as a condition to becoming a member or acquiring a membership interest. Current law is unclear in this regard as there is no provision in the TLLCA explicitly requiring a member to make a contribution in order to become a member or acquire a membership interest, but such a requirement might be implied in provisions addressing contributions. The approach in Section 101.102 follows the approach taken in the Delaware Limited Liability Company Act.

Revised Law:

Sec. 101.103. EFFECTIVE DATE OF MEMBERSHIP. (a) A person who acquires a membership interest in a limited liability company in connection with the formation of the company becomes a member of the company on the date the company is formed if the person is named as an initial member in the company's certificate of formation.

(b) A person who acquires a membership interest in a limited liability company during the formation of the company but who is not named as

an initial member in the company's certificate of formation becomes a member of the company on the latest of:

(1) the date the company is formed;

(2) the date stated in the company's records as the date the person becomes a member of the company; or

(3) if the company's records do not state a date described by Subdivision (2), the date the person's admission to the company is first reflected in the company's records.

(c) A person who, after the formation of a limited liability company, acquires directly or is assigned a membership interest in the company becomes a member of the company on approval or consent of all of the company's members.

Source Law:

TLLCA 4.01

Art. 4.01. A. . . . In connection with the formation of a limited liability company, a person acquiring an interest as a member becomes a member on the latter of:

(1) the date of formation of the limited liability company;
or

(2) the date stated in the records of the limited liability company as the date that the person becomes a member or, if no date is stated in those records, on the date that the person's admission is first reflected in the records of the limited liability company.

B. After the formation of a limited liability company, a person becomes a new member:

(1) in the case of a person acquiring a membership interest directly from the limited liability company, on compliance with the provisions of the regulations governing admission of new members or, if the regulations contain no relevant admission provisions, on the written consent of all members; and

(2) in the case of an assignee of a membership interest, as provided by Section A of Article 4.07 of this Act.

* * *

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052 explaining the change in structure of the Code.

Revised Law:

Sec. 101.104. CLASSES OR GROUPS OF MEMBERS OR MEMBERSHIP INTERESTS.

(a) The company agreement of a limited liability company may:

(1) establish within the company classes or groups of one or more members or membership interests each of which has certain expressed relative rights, powers, and duties, including voting rights; and

(2) provide for the manner of establishing within the company additional classes or groups of one or more members or membership interests each of which has certain expressed relative rights, powers, and duties, including voting rights.

(b) The rights, powers, and duties of a class or group of members or membership interests described by Subsection (a)(2) may be stated in the company agreement or stated at the time the class or group is established.

(c) If the company agreement of a limited liability company does not provide for the manner of establishing classes or groups of members or membership interests under Subsection (a)(2), additional classes or groups of members or membership interests may be established only by the adoption of an amendment to the company agreement.

(d) The rights, powers, or duties of any class or group of members or membership interests of a limited liability company may be senior to the rights, powers, or duties of any other class or group of members or membership interests in the company, including a previously established class or group.

Source Law:

TLLCA 4.02

Art. 4.02. A. The regulations may establish classes or groups of one or more members having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the regulations, of additional classes or groups of members having certain relative rights, powers, or duties, including voting rights, expressed either in the regulations or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of members.

Revisor's Note:

No substantive change is intended. The revised law specifies that additional classes or groups of members or membership interests may be established by the adoption of an amendment to the company agreement if the company agreement does not provide the manner in which additional classes or groups are created. This was implicit in the TLLCA provisions.

Revised Law:

Sec. 101.105. ISSUANCE OF MEMBERSHIP INTERESTS AFTER FORMATION OF COMPANY. A limited liability company, after the formation of the company, may:

(1) issue membership interests in the company to any person with the approval of all of the members of the company; and

(2) if the issuance of a membership interest requires the establishment of a new class or group of members or membership interests, establish a new class or group as provided by Sections 101.104(a)(2), (b), and (c).

Source Law:

TLLCA 2.23.D

D. Except as provided in the articles of organization or the regulations, the affirmative vote, approval, or consent of a majority of all the members is required to:

. . .

(2) issue any additional membership interests in the limited liability company subsequent to the issuance of membership interests to the initial members of the limited liability company;

. . .

TLLCA 4.02

Art. 4.02. A. The regulations may establish classes or groups of one or more members having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the regulations, of additional classes or groups of members having certain relative rights, powers, or duties, including voting rights, expressed either in the regulations or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of members.

Revisor's Note:

Section 101.105 provides that a limited liability company may issue additional membership interests in the company with the approval of all of the members of the company. Existing law provides that additional membership interests may be issued upon the vote of a majority of the members. The change would correct an inconsistency in the existing law under which admission of an additional member after formation of the company requires consent of all members while issuance of the membership interest requires consent of a mere majority of members. To the extent that issuance of additional membership interests implicates or impacts provisions of the company agreement, a unanimous member approval requirement is consistent with the rule requiring unanimous consent to amend the company agreement, as well.

Revised Law:

Sec. 101.106. NATURE OF MEMBERSHIP INTEREST. (a) A membership interest in a limited liability company is personal property.

(b) A member of a limited liability company or an assignee of a membership interest in a limited liability company does not have an interest in any specific property of the company.

Source Law:

TLLCA 4.04

Art. 4.04. A. A membership interest is personal property. A member has no interest in specific limited liability company property.

Revisor's Note:

No substantive change is intended. The revised law adds language clarifying that an assignee of a membership interest, like a member, does not have an interest in any specific property of the company.

Revised Law:

Sec. 101.107. WITHDRAWAL OR EXPULSION OF MEMBER PROHIBITED. A member of a limited liability company may not withdraw or be expelled from the company.

Source Law:

TLLCA 5.05

Art. 5.05. A. member may withdraw or be expelled from a limited liability company at the time or on the occurrence of events specified in the regulations.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052 explaining the change in structure of the Code.

Revised Law:

Sec. 101.108. ASSIGNMENT OF MEMBERSHIP INTEREST. (a) A membership interest in a limited liability company may be wholly or partly assigned.

(b) An assignment of a membership interest in a limited liability company:

(1) is not an event requiring the winding up of the company;
and

(2) does not entitle the assignee to:

(A) participate in the management and affairs of the company;

(B) become a member of the company; or

(C) exercise any rights of a member of the company.

Source Law:

TLLCA 4.05.A(1) & (2)

(1) a membership interest is assignable in whole or in part;

(2) an assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.109. RIGHTS AND DUTIES OF ASSIGNEE OF MEMBERSHIP INTEREST BEFORE MEMBERSHIP. (a) A person who is assigned a membership interest in a limited liability company is entitled to:

(1) receive any allocation of income, gain, loss, deduction, credit, or a similar item that the assignor is entitled to receive to the extent the allocation of the item is assigned;

(2) receive any distribution the assignor is entitled to receive to the extent the distribution is assigned;

(3) require, for any proper purpose, reasonable information or a reasonable account of the transactions of the company; and

(4) make, for any proper purpose, reasonable inspections of the books and records of the company.

(b) An assignee of a membership interest in a limited liability company is entitled to become a member of the company on the approval of all of the company's members.

(c) An assignee of a membership interest in a limited liability company is not liable as a member of the company until the assignee becomes a member of the company.

Source Law:

TLLCA 4.05.A(3)

(3) an assignment entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items, and to receive distributions, to which the assignor was entitled, to the extent those items are assigned, and, for any proper purpose, to require reasonable information or account of

transactions of the limited liability company and to make reasonable inspection of the books and records of the limited liability company; and

TLLCA 4.05.C

C. Until an assignee of the interest of a member in a limited liability company is admitted as a member, the assignee does not have liability as a member solely as a result of the assignment.

TLLCA 4.07.A

A. An assignee of a membership interest may become a member if and to the extent that:

- (1) the regulations provide; or
- (2) all members consent.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.110. RIGHTS AND LIABILITIES OF ASSIGNEE OF MEMBERSHIP INTEREST AFTER BECOMING MEMBER. (a) An assignee of a membership interest in a limited liability company, after becoming a member of the company, is:

(1) entitled, to the extent assigned, to the same rights and powers granted or provided to a member of the company by the company agreement or this code;

(2) subject to the same restrictions and liabilities placed or imposed on a member of the company by the company agreement or this code; and

(3) except as provided by Subsection (b), liable for the assignor's obligation to make contributions to the company.

(b) An assignee of a membership interest in a limited liability company, after becoming a member of the company, is not obligated for a liability of the assignor that:

(1) the assignee did not have knowledge of on the date the assignee became a member of the company; and

(2) could not be ascertained from the company agreement.

Source Law:

TLLCA 4.07.B

B. An assignee who becomes a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the regulations and this Act. Unless otherwise provided by regulations, an assignee who becomes a member also is liable for the obligations of the assignor to make contributions but is not

obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the regulations.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.111. RIGHTS AND DUTIES OF ASSIGNOR OF MEMBERSHIP INTEREST.

(a) An assignor of a membership interest in a limited liability company continues to be a member of the company and is entitled to exercise any unassigned rights or powers of a member of the company until the assignee becomes a member of the company.

(b) An assignor of a membership interest in a limited liability company is not released from the assignor's liability to the company, regardless of whether the assignee of the membership interest becomes a member of the company.

Source Law:

TLLCA 4.05.A(4)

(4) until the assignee becomes a member, the assignor member continues to be a member and to have the power to exercise any rights or powers of a member, except to the extent those rights or powers are assigned.

TLLCA 4.07.C

C. Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.112. JUDGMENT CREDITOR; CHARGE OF MEMBERSHIP INTEREST. (a) On application by a judgment creditor of a member of a limited liability company or any other owner of a membership interest in a limited liability company, a court may charge the membership interest of the member or owner, as appropriate, with payment of the unsatisfied amount of the judgment.

(b) If a court charges a membership interest with payment of a judgment as provided by Subsection (a), the judgment creditor has only the rights of an assignee of the membership interest.

(c) This section may not be construed to deprive a member of a limited liability company or any other owner of a membership interest in a limited liability company of the benefit of any exemption laws applicable to the membership interest of the member or owner.

Source Law:

TLLCA 4.06

Art. 4.06. A. On application to a court of competent jurisdiction by a judgment creditor of a member or any other owner of a membership interest, the court may charge the membership interest of the member or other owner with payment of the unsatisfied amount of the judgment. Except as otherwise provided in the regulations to the extent that the membership interest is charged in this manner, the judgment creditor has only the rights of an assignee of the interest. This Section does not deprive any member of the benefit of any exemption laws applicable to that member's membership interest.

Revisor's Note:

No substantive change is intended. Subsection (c) of the revised law clarifies that the membership interest of an "other owner," in addition to a member, has the benefit of any exemption laws, which is implied in the source law.

Revised Law:

Sec. 101.113. PARTIES TO ACTIONS. A member of a limited liability company may be named as a party in an action by or against the limited liability company only if the action is brought to enforce the member's right against or liability to the company.

Source Law:

TLLCA 4.03.C

C. Parties to actions. A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.114. LIABILITY FOR OBLIGATIONS. Except as and to the extent the company agreement specifically provides otherwise, a member or manager is not liable for a debt, obligation, or liability of a limited liability company, including a debt, obligation, or liability under a judgment, decree, or order of a court.

Source Law:

TLLCA 4.03.A

Art. 4.03. A. Except as and to the extent the regulations specifically provide otherwise, a member or manager is not liable for the debts, obligations or liabilities of a limited liability company including under a judgment decree, or order of a court.

Revisor's Note:

No substantive change is intended.

(Sections 101.115-101.150 reserved for expansion)

SUBCHAPTER D. CONTRIBUTIONS

Revised Law:

Sec. 101.151. REQUIREMENTS FOR ENFORCEABLE PROMISE. A promise to make a contribution or otherwise pay cash or transfer property to a limited liability company is enforceable only if the promise is:

- (1) in writing; and
- (2) signed by the person making the promise.

Source Law:

TLLCA 5.02.A

A. A promise by a member to make a contribution to, or otherwise pay cash or transfer property to, a limited liability company is not enforceable unless set out in writing and signed by the member.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.152. ENFORCEABLE PROMISE NOT AFFECTED BY CHANGE IN CIRCUMSTANCES. A member of a limited liability company is obligated to perform an enforceable promise to make a contribution or otherwise pay cash or transfer property to the company without regard to the death, disability, or other change in circumstances of the member.

Source Law:

TLLCA 5.02.B

B. Except as otherwise provided by the articles of organization or regulations, a member or the member's legal representative or successor is obligated to the limited liability company to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to a limited liability company, notwithstanding the member's death, disability, or other change in circumstances. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.153. FAILURE TO PERFORM ENFORCEABLE PROMISE; CONSEQUENCES.

(a) A member of a limited liability company, or the member's legal representative or successor, who does not perform an enforceable promise to make a contribution, including a previously made contribution, or to otherwise pay cash or transfer property to the company is obligated, at the request of the company, to pay in cash the agreed value of the contribution, as stated in the company agreement or the company's records required under Sections 3.151 and 101.501, less:

- (1) any amount already paid for the contribution; and
- (2) the value of any property already transferred.

(b) The company agreement of a limited liability company may provide that the membership interest of a member who fails to perform an enforceable promise to make a payment of cash or transfer property to the company, whether as a contribution or in connection with a contribution already made, may be:

- (1) reduced;
- (2) subordinated to other membership interests of nondefaulting members;
- (3) redeemed or sold at a value determined by appraisal or other formula; or
- (4) made the subject of:
 - (A) a forced sale;
 - (B) forfeiture;
 - (C) a loan from other members of the company in an amount necessary to satisfy the enforceable promise; or
 - (D) another penalty or consequence.

Source Law:

TLLCA 5.02.B & C

B. . . . If a member or a member's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that member or the member's legal representative or successor is obligated, at the option of the limited liability company, to pay to the limited liability company an amount of cash equal to that portion of the agreed value, as stated in the regulations or in the limited liability company records required to be kept under Article 2.22 of this Act, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

C. The regulations may provide that the interest of a member who fails to make a payment of cash or transfer of property to the limited liability company, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences. A consequence may take the form of a reduction of the defaulting member's percentage or other interest in the limited liability company, subordination of the member's interest to that of nondefaulting members, a forced sale of the member's interest, forfeiture of the member's interest, the lending of money to the defaulting member by other members of the amount necessary to meet the defaulting member's commitment, a determination of the value of the defaulting member's interest by appraisal or by formula and redemption or sale of the interest at that value, or other penalty or consequence.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.154. CONSENT REQUIRED TO RELEASE ENFORCEABLE OBLIGATION. The obligation of a member of a limited liability company, or of the member's legal representative or successor, to make a contribution or otherwise pay cash or transfer property to the company, or to return cash or property to the company paid or distributed to the member in violation of this code or the company agreement, may be released or settled only by consent of each member of the company.

Source Law:

TLLCA 5.02.D

D. Unless otherwise provided by the regulations, the obligation of a member or a member's legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the member in violation of this Act or the regulations may be compromised or released only by consent of all of the members. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.155. CREDITOR'S RIGHT TO ENFORCE CERTAIN OBLIGATIONS. A creditor of a limited liability company who extends credit or otherwise acts in reasonable reliance on an enforceable obligation of a member of the company that is released or settled as provided by Section 101.154 may enforce the original obligation if the obligation is stated in a document that is:

(1) signed by the member; and

(2) not amended or canceled to evidence the release or settlement of the obligation.

Source Law:

TLLCA 5.02.D

D. . . . Notwithstanding the compromise or release, a creditor of a limited liability company who extends credit or otherwise acts in reasonable reliance on that obligation, after the member signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation.
. . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.156. REQUIREMENTS TO ENFORCE CONDITIONAL OBLIGATION. (a) An obligation of a member of a limited liability company that is subject to a condition may be enforced by the company or a creditor described by Section 101.155 only if the condition is satisfied or waived by or with respect to the member.

(b) A conditional obligation of a member of a limited liability company under this section includes a contribution payable on a discretionary call of the limited liability company before the time the call occurs.

Source Law:

TLLCA 5.02.D

D. . . . A conditional obligation may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by the applicable member. Conditional obligations include contributions payable on a discretionary call of a limited liability company, prior to the time the call occurs.

Revisor's Note:

No substantive change is intended.

(Sections 101.157-101.200 reserved for expansion)

SUBCHAPTER E. ALLOCATIONS AND DISTRIBUTIONS

Revised Law:

Sec. 101.201. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited liability company shall be allocated to each member of the company in accordance with the member's percentage or other interest in the company on the date of the allocation as stated in the company's records required under Sections 3.151 and 101.501.

Source Law:

TLLCA 5.02-1

Art. 5.02-1. A. The profits and losses of a limited liability company shall be allocated among the members and among classes of members in the manner provided in the regulations. If the regulations do not otherwise provide, the profits and losses shall be allocated in accordance with the then current percentage or other interest in the limited liability company of the members stated in limited liability company records of the kind described in Section A of Article 2.22 of this Act.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.202. DISTRIBUTION IN KIND. A member of a limited liability company is entitled to receive or demand a distribution from the company only in the form of cash, regardless of the form of the member's contribution to the company.

Source Law:

TLLCA 5.07

Art. 5.07. A. Except as provided by the articles of organization or regulations, a member, regardless of the nature of the member's contribution, may not demand or receive a distribution from a limited liability company in any form other than cash.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.203. SHARING OF DISTRIBUTIONS. Distributions of cash and other assets of a limited liability company shall be made to each member of the company according to the agreed value of the member's contribution to the company as stated in the company's records required under Sections 3.151 and 101.501.

Source Law:

TLLCA 5.03

Art. 5.03. A. Distributions of cash or other assets of a limited liability company shall be made to the members in the manner provided by the regulations. If the regulations do not otherwise provide, distributions shall be made on the basis of

the agreed value, as stated in the records required to be kept under Article 2.22 of this Act, of the contributions made by each member.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.204. INTERIM DISTRIBUTIONS. A member of a limited liability company, before the winding up of the company, is not entitled to receive and may not demand a distribution from the company until the company's governing authority declares a distribution to:

- (1) each member of the company; or
- (2) a class or group of members that includes the member.

Source Law:

TLLCA 5.04

Art. 5.04. A. Except as otherwise provided by this Article, a member is entitled to receive distributions from a limited liability company before the member's withdrawal from the limited liability company and before the winding up of the limited liability company to the extent and at the times or on the occurrence of the events specified in the regulations.

Revisor's Note:

Section 101.204 provides that until the company is wound up, no member of a limited liability company is entitled to receive or demand a distribution from the company until the company's governing authority declares a distribution to each of the members or to a class or group that includes the member in question. Existing law leaves the determination and timing of such distributions to the company's regulations; this change provides a new default rule.

Revised Law:

Sec. 101.205. DISTRIBUTION ON WITHDRAWAL. A member of a limited liability company who validly exercises the member's right to withdraw from the company granted under the company agreement is entitled to receive, within a reasonable time after the date of withdrawal, the fair value of the member's interest in the company determined as of the date of withdrawal.

Source Law:

TLLCA 5.06

Art. 5.06. A. Except as otherwise provided by this Act, the articles of organization or the regulations, on withdrawal, any withdrawing member is entitled to receive, within a reasonable

time after withdrawal, the fair value of that member's interest in the limited liability company as of the date of withdrawal.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.206. PROHIBITED DISTRIBUTION; DUTY TO RETURN. (a) A limited liability company may not make a distribution to a member of the company if, immediately after making the distribution, the company's total liabilities, other than liabilities described by Subsection (b), exceed the fair value of the company's total assets.

(b) For purposes of Subsection (a), the liabilities of a limited liability company do not include:

(1) a liability related to the member's membership interest;

or

(2) except as provided by Subsection (c), a liability for which the recourse of creditors is limited to specified property of the company.

(c) For purposes of Subsection (a), the assets of a limited liability company include the fair value of property subject to a liability for which recourse of creditors is limited to specified property of the company only if the fair value of that property exceeds the liability.

(d) A member of a limited liability company who receives a distribution from the company in violation of this section is required to return the distribution to the company if the member had knowledge of the violation.

(e) This section may not be construed to affect the obligation of a member of a limited liability company to return a distribution to the company under the company agreement or other state or federal law.

Source Law:

TLLCA 5.09.A & B

A. A limited liability company may not make a distribution to its members to the extent that, immediately after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the limited liability company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the limited liability company assets only to the extent that the fair value of that property exceeds that liability.

B. A member who receives a distribution that is not permitted under Section A of this Article has no liability under this Act

to return the distribution unless the member knew that the distribution violated the prohibition of Section A. This Section does not affect any obligation of the members under the regulations or other applicable law to return the distribution.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.207. CREDITOR STATUS WITH RESPECT TO DISTRIBUTION. Subject to Sections 11.053 and 101.206, when a member of a limited liability company is entitled to receive a distribution from the company, the member, with respect to the distribution, has the same status as a creditor of the company and is entitled to any remedy available to a creditor of the company.

Source Law:

TLLCA 5.08

Art. 5.08. A. Subject to Articles 5.09 and 6.04 of this act, at the time that a member becomes entitled to receive a distribution, with respect to the distribution, that member has the status of and is entitled to all remedies available to a creditor of the limited liability company.

Revisor's Note:

No substantive change is intended.

(Sections 101.208-101.250 reserved for expansion)

SUBCHAPTER F. MANAGEMENT

Revised Law:

Sec. 101.251. MEMBERSHIP. The governing authority of a limited liability company consists of:

- (1) the managers of the company, if the company's certificate of formation states that the company will have one or more managers; or
- (2) the members of the company, if the company's certificate of formation states that the company will not have managers.

Source Law:

TLLCA 2.12

Art. 2.12. A. Except and to the extent the articles of organization or the regulations shall reserve management of the limited liability company to the members in whole or in part, and subject to provisions in the articles of organization, the regulations, or this Act restricting or enlarging the powers, rights, and duties of any manager or group or class of managers, the powers of a limited liability company shall be exercised by or under the authority of, and the business and affairs of a limited liability company shall be managed under

the direction of, the manager or managers of the limited liability company. If management of the limited liability company is fully reserved to the members, the limited liability company need not have managers. . . . The regulations may prescribe other qualifications for managers. If the management of the limited liability company is reserved in whole or in part to the members, Articles 2.17, 2.18, 2.19, and 2.20 of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

The term "governing authority" in the revised law refers to both managers of a manager-managed limited liability company and members of a member-managed limited liability company. Therefore, the provisions of the Code that carry forward the provisions found in Articles 2.17, 2.18, 2.19 and 2.20 of the TLLCA apply to managers or to members, as the case may be, by virtue of use of the term "governing authority."

The source law specifically provides that the regulations may prescribe other qualifications for managers, which is implicit in Section 101.052. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.252. MANAGEMENT BY GOVERNING AUTHORITY. The governing authority of a limited liability company shall manage the business and affairs of the company as provided by:

(1) the company agreement; and

(2) this title and the provisions of Title 1 applicable to a limited liability company to the extent that the company agreement does not provide for the management of the company.

Source Law:

TLLCA 2.12

Art. 2.12. A. Except and to the extent the articles of organization or the regulations shall reserve management of the limited liability company to the members in whole or in part, and subject to provisions in the articles of organization, the regulations, or this Act restricting or enlarging the powers, rights, and duties of any manager or group or class of managers, the powers of a limited liability company shall be exercised by or under the authority of, and the business and affairs of a limited liability company shall be managed under the direction of, the manager or managers of the limited liability company. If management of the limited liability company is fully reserved to the members, the limited liability company need not have managers. . . .If the management of the limited liability company is reserved in whole or in part to the members, Articles 2.17, 2.18, 2.19, and 2.20 of this Act apply to the members who manage the limited liability company

to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

The revised law does not state, as does the TLLCA, that a limited liability company is managed by managers unless management is reserved to the members because, even under the TLLCA, the matter must be addressed in one way or the other in the articles of organization. The articles of organization must either designate initial managers or state that there are no managers and that management is reserved to the members. Thus, there is in effect no default rule because the form of management must be addressed in the articles of organization. The revised law also clarifies that a limited liability company, whether member-managed or manager-managed, is governed first by its company agreement and second by the Code to the extent the company agreement does not provide for management of the company. The revised law also omits references to both members and managers managing the company, referring to both simply as the "governing authority."

Revised Law:

Sec. 101.253. DESIGNATION OF COMMITTEES; DELEGATION OF AUTHORITY.

(a) The governing authority of a limited liability company by resolution may designate:

(1) one or more committees of the governing authority consisting of one or more governing persons of the company; and

(2) subject to any limitation imposed by the governing authority, a governing person to serve as an alternate member of a committee designated under Subdivision (1) at a committee meeting from which a member of the committee is absent or disqualified.

(b) A committee of the governing authority of a limited liability company may exercise the authority of the governing authority as provided by the resolution designating the committee.

(c) The designation of a committee under this section does not relieve the governing authority of any responsibility imposed by law.

Source Law:

TLLCA 2.18.A & C

A. If the regulations so provide, the managers, by resolution, may designate from among the managers one or more committees, each of which shall be comprised of one or more of the managers, and may designate one or more of the managers as alternate members of any committee, who may, subject to any limitations imposed by the managers, replace absent or disqualified managers at any meeting of that committee. Any such committee, to the extent provided in such resolution or in the regulations, shall have and may exercise all of the authority of the managers, subject to the limitations set forth in Sections B and C of this Article. Unless the resolution

designating a particular committee, the articles of organization, or the regulations expressly so provides, a committee of the managers does not have the authority to authorize or make a distribution of limited liability company cash or property to the members or to authorize the issuance of interests in the limited liability company.

C. The designation of a committee of the managers and the delegation thereto of authority shall not operate to relieve the managers of any responsibility imposed by law.

TLLCA 2.12A

. . .If the management of the limited liability company is reserved in whole or in part to the members, Articles . . . 2.18. . . of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

Section 101.253 provides that the governing authority of a limited liability company may designate one or more committees and that such a committee may exercise the authority of the governing authority as provided in the resolution designating the committee, but that the designation of a committee under this section does not relieve the governing authority of any responsibility imposed by law. Existing law allows the designation of committees only if the regulations so provide. Also, the revised law omits language requiring express authority in resolutions, the articles of organization or the regulations for a committee to make a distribution of limited liability company cash or property to members or to authorize the issuance of interests in the limited liability company. This requirement is now set forth in more general terms in subsection (b) of Section 101.253, which specifies that the committee's authority is provided by the resolution designating the committee.

Revised Law:

Sec. 101.254. DESIGNATION OF AGENTS; BINDING ACTS. (a) Except as provided by this title and Title 1, each governing person of a limited liability company and each officer or agent of a limited liability company vested with actual or apparent authority by the governing authority of the company is an agent of the company for purposes of carrying out the company's business.

(b) An act committed by an agent of a limited liability company described by Subsection (a) for the purpose of apparently carrying out the ordinary course of business of the company, including the execution of an instrument, document, mortgage or conveyance in the name of the company, binds the company unless:

(1) the agent does not have actual authority to act for the company; and

(2) the person with whom the agent is dealing has knowledge of the agent's lack of actual authority.

(c) An act committed by an agent of a limited liability company described by Subsection (a) that is not apparently for carrying out the ordinary course of business of the company binds the company only if the act is authorized in accordance with this title.

Source Law:

TLLCA 2.11

Art. 2.11. A. Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance may be made, in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of the property of the limited liability company shall be valid and binding upon the company, if they are executed by one or more persons as provided in Article 2.21 of this Act.

TLLCA 2.21.C & D

C. Except as otherwise provided in this Article, the following are agents of a limited liability company for the purpose of its business:

(1) any one or more officers or other agents of a limited liability company who are vested with actual or apparent authority;

(2) each manager, to the extent that management of the limited liability company is vested in that manager; and

(3) each member, to the extent that management of the limited liability company has been reserved to that member.

D. An act, including the execution in the name of the limited liability company of any instrument, for the purpose of apparently carrying on in the usual way the business of the limited liability company by any of the persons described in Section C of this Article binds the limited liability company unless:

(1) the officer, agent, manager, or member so acting otherwise lacks the authority to act for the limited liability company; and

(2) the person with whom the officer, agent, manager, or member is dealing has knowledge of the fact that the officer, agent, manager, or member does not have that authority.

Revisor's Note:

No substantive change is intended. The revised law combines provisions of the TLLCA relating to limited liability company property and authority of agents into one section. The provisions of TLLCA 2.11 stating that a limited liability company may own or purchase property in its own name and that

instruments and documents providing for the acquisition, mortgage, or disposition of the limited liability company's property are binding upon the company if executed by an agent of the company are simplified in the Code, which states that an act committed by an agent of a limited liability company, "including the execution of an instrument, document, mortgage or conveyance in the name of the company" is binding upon the company. Section 101.254(c) was previously implied by the TLLCA and is now made explicit by the Code, which clarifies that acts by agents not apparently for carrying out the ordinary course of business may bind the company only if authorized in accordance with this Title.

Revised Law:

Sec. 101.255. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED GOVERNING PERSONS OR OFFICERS. (a) This section applies only to a contract or transaction between a limited liability company and:

(1) one or more of the company's governing persons or officers; or

(2) an entity or other organization in which one or more of the company's governing persons or officers:

(A) is a managerial official; or

(B) has a financial interest.

(b) An otherwise valid contract or transaction is valid notwithstanding that a governing person or officer of the company is present at or participates in the meeting of the governing authority, or of a committee of the governing person's authority, that authorizes the contract or transaction or votes to authorize the contract or transaction, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by:

(A) the company's governing authority or a committee of the governing authority and the governing authority or committee in good faith authorizes the contract or transaction by the affirmative vote of the majority of the disinterested governing persons or committee members, regardless of whether the disinterested governing persons or committee members constitute a quorum; or

(B) the members of the company, and the members in good faith approve the contract or transaction by a vote of the members; or

(2) the contract or transaction is fair to the company when the contract or transaction is authorized, approved, or ratified by the governing authority, a committee of the governing authority, or the members of the company.

(c) Common or interested governing persons of a limited liability company may be included in determining the presence of a quorum at a meeting of the company's governing authority, or of a committee of the governing authority that authorizes the contract or transaction.

Source Law:

TLLCA 2.17.A & B

A. Unless otherwise provided in the articles of organization or the regulations, an otherwise valid contract or transaction between a limited liability company and one or more of its managers or officers, or between a limited liability company and any other domestic or foreign limited liability company or other entity in which one or more of its managers or officers are managers, directors or officers or have a financial interest, shall be valid notwithstanding the manager or officer is present at or participates in the meeting of managers or of a committee of managers which authorizes the contract or transaction, or solely because such manager's or managers' votes are counted for such purpose, if any of the following is satisfied:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the managers or the committee, and the managers or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested managers, even though the disinterested managers be less than a quorum; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the members; or

(3) The contract or transaction is fair as to the limited liability company as of the time it is authorized, approved, or ratified by the managers, a committee thereof, or the members.

B. Unless otherwise provided in the articles of organization or the regulations, common or interested managers may be counted in determining the presence of a quorum at a meeting of the managers or of a committee which authorizes the contract or transaction.

TLLCA 2.12A

. . . If the management of the limited liability company is reserved in whole or in part to the members, Articles 2.17. . . of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

No substantive change is intended.

(Sections 101.256-101.300 reserved for expansion)

SUBCHAPTER G. MANAGERS

Revised Law:

Sec. 101.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a limited liability company that has one or more managers.

Source Law:

New

Revisor's Note:

This provision of the revised law makes explicit that rules applicable to managers do not apply to limited liability companies without managers.

Revised Law:

Sec. 101.302. NUMBER AND QUALIFICATIONS. (a) The managers of a limited liability company may consist of one or more persons.

(b) Except as provided by Subsection (c), the number of managers of a limited liability company consists of the number of initial managers listed in the company's certificate of formation.

(c) The number of managers of a limited liability company may be increased or decreased by amendment to, or as provided by, the company agreement, except that a decrease in the number of managers may not shorten the term of an incumbent manager.

(d) A manager of a limited liability company is not required to be a:

- (1) resident of this state; or
- (2) member of the company.

Source Law:

TLLCA 2.12

Art. 2.12. A. . . . Managers need not be residents of this State or members of the limited liability company unless the regulations so require. The regulations may prescribe other qualifications for managers. . . .

TLLCA 2.13

Art. 2.13. A. The managers of a limited liability company, if any, shall consist of one or more persons. The number of managers shall be fixed by, or in the manner provided in, the regulations, except as to the number constituting the initial managers, which number shall be fixed by the articles of organization. The number of managers may be increased or decreased from time to time by amendment to, or in the manner provided in, the regulations, but, unless provided otherwise in the articles of organization or the regulations, no decrease shall have the effect of shortening the term of any incumbent

manager. In the absence of a regulation fixing the number of managers or providing for the manner in which the number of managers shall be fixed, the number of managers shall be the same as the number constituting the initial managers. . . .

Revisor's Note:

No substantive change is intended. The source law specifically provides that the regulations may prescribe other qualifications for managers, which is implicit in Section 101.052. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.303. TERM. A manager of a limited liability company serves:

(1) for the term, if any, for which the manager is elected and until the manager's successor is elected; or

(2) until the earlier resignation, removal or death of the manager.

Source Law:

TLLCA 2.13

Art. 2.13. A. . . . Unless otherwise provided in the regulations or in any resolution of the managers or members appointing that manager in accordance with the regulations or articles of organization, each manager shall hold office for the term for which elected, if any term is specified, and until that manager's successor has been elected, or until that manager's earlier death, resignation, or removal. The regulations may provide for the time or times at which the members entitled to vote in the election of managers shall elect managers and the term for which the managers shall hold office. . . .

Revisor's Note:

No substantive change is intended. The source law specifically provides that the regulations may prescribe the time of election of and the office term for managers, which is implicit in Section 101.052. See Revisor's Note to Section 101.052.

Revised Law:

Sec. 101.304. REMOVAL. Subject to Section 101.306(a), a manager of a limited liability company may be removed, with or without cause, at a meeting of the company's members called for that purpose.

Source Law:

TLLCA 2.13

Art. 2.13. A. . . . The regulations may provide that at any meeting of members called expressly for that purpose any managers may be removed, with or without cause, as provided therein

Revisor's Note:

Section 101.304 makes clear the right of the members to remove a manager even if the company agreement is silent regarding removal. TLLCA Art. 2.13 states that "[t]he regulations may provide that at any meeting of the members called expressly for that purpose any managers may be removed, with or without cause, as provided therein." Thus, the right of members to remove managers absent provisions in the regulations is unclear under existing law. This change is consistent with the change made in Section 21.409 regarding removal of corporate directors.

Revised Law:

Sec. 101.305. MANAGER VACANCY. (a) Subject to Section 101.306(b), a vacancy in the position of a manager of a limited liability company may be filled by:

(1) the affirmative vote of the majority of the remaining managers of the company, without regard to whether the remaining managers constitute a quorum; or

(2) if the vacancy is a result of an increase in the number of managers, an election at an annual or special meeting of the company's members called for that purpose.

(b) A person elected to fill a vacancy in the position of a manager serves for the unexpired term of the person's predecessor.

Source Law:

TLLCA 2.15.A & B

A. Unless otherwise provided in the articles of organization or the regulations, any vacancy occurring in the managers may be filled in accordance with Section B of this Article or may be filled by the affirmative vote of a majority of the remaining managers though less than a quorum of the managers. Unless otherwise provided in the articles of organization or the regulations, a manager elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office.

B. Unless otherwise provided in the articles of organization or the regulations, any vacancy occurring in the managers to be filled by reason of an increase in the number of managers may be filled by election at an annual or special meeting of members called for that purpose.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. See Revisor's Note to Section 101.052 explaining the change in the structure of the Code regarding the company agreement.

Revised Law:

Sec. 101.306. REMOVAL AND REPLACEMENT OF MANAGER ELECTED BY CLASS OR GROUP. (a) If a class or group of the members of a limited liability company is entitled by the company agreement of the company to elect one or more managers of the company, a manager may be removed from office only by the class or group that elected the manager.

(b) A vacancy in the position of a manager elected as provided by Subsection (a) may be filled only by:

(1) a majority vote of the managers serving on the date the vacancy occurs who were elected by the class or group of members; or

(2) a majority vote of the members of the class or group.

Source Law:

TLLCA 2.13

Art. 2.13. A. . . . if any class or group of members is entitled to elect one or more managers by the provisions of the regulations, only the members of that class or group shall be entitled to vote for or against the removal of any managers elected by the members of that class or group.

TLLCA 2.15.C

C. Notwithstanding Sections A and B of this Article, whenever the holders of any class or series of membership interests are entitled to elect one or more managers by the provisions of the regulations, any vacancies, and any newly created managers of such class or series to be filled by reason of an increase in the number of such managers may be filled by the affirmative vote of a majority of the managers, elected by such class or series then in office or by a sole remaining manager so elected, or by the vote of the holders of the outstanding membership interests of such class or series, and such vacancy shall not in any case be filled by the vote of the remaining managers or the holders of the outstanding membership interests as a whole unless otherwise provided in the regulations.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.307. METHODS OF CLASSIFYING MANAGERS. Other methods of classifying managers of a limited liability company, including providing for managers who serve for staggered terms of office or terms that are not uniform, may be established in the company agreement.

Source Law:

TLLCA 2.14

Art. 2.14. A. The regulations may provide that the managers shall be divided into more than one class, each class to be the number specified in the regulations, the terms of managers of

each class to expire in the order provided in the regulations and at the meetings of the members at which the regulations provide that managers are to be elected. If the regulations provide for the classification of managers, (1) the whole number of managers of the limited liability company need not be elected annually or at any regularly scheduled meeting of the members, and (2) after such classification, at each meeting at which the regulations provide that managers are to be elected, the number of managers equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the next succeeding meeting at which the regulations provide that the successors to the managers are to be elected. A classification of managers adopted after the last meeting of members at which managers were elected may not be effective before the next meeting of members at which managers are elected unless the classification is effected by an amendment to the regulations adopted by the members.

Revisor's Note:

The revised law merely simplifies language in the TLLCA. No substantive change is intended.

(Sections 101.308-101.350 reserved for expansion)

SUBCHAPTER H. MEETINGS AND VOTING

Revised Law:

Sec. 101.351. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a meeting of and voting by:

- (1) the governing authority of a limited liability company;
- (2) the members of a limited liability company if the members do not constitute the governing authority of the company; and
- (3) a committee of the governing authority of a limited liability company.

Source Law:

TLLCA 2.12A

. . . If the management of the limited liability company is reserved in whole or in part to the members, Articles . . . 2.19. . . of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

No substantive change is intended. While not having a direct derivation in the source law, this provision clarifies the scope of application of Subchapter H's procedural requirements applicable to meetings and voting.

Revised Law:

Sec. 101.352. GENERAL NOTICE REQUIREMENTS. (a) Except as provided by Subsection (b), notice of a regular or special meeting of the governing authority or members of a limited liability company, or a committee of the company's governing authority, shall be given in writing to each governing person, member, or committee member, as appropriate, and as provided by Section 6.051.

(b) If the members of a limited liability company do not constitute the governing authority of the company, notice required by Subsection (a) shall be given by or at the direction of the governing authority not later than the 10th day or earlier than the 60th day before the date of the meeting. Notice of a meeting required under this subsection must state the business to be transacted at the meeting or the purpose of the meeting if:

(1) the meeting is a special meeting; or

(2) a purpose of the meeting is to consider a matter described by Section 101.356.

Source Law:

TLLCA 2.19.B, C & D

B. Regular meetings of the managers or committees may be held with or without notice as prescribed in the regulations. Special meetings of the managers or committees shall be held upon such notice as is prescribed in the regulations.

C. Except as otherwise provided in the articles of organization or the regulations, if the limited liability company is without managers, regular meetings of members may be held with or without notice as prescribed in the regulations and special meetings of members may be held with or without notice as prescribed in the regulations, unless such meeting is to consider any of those matters set forth in Section D, Article 2.23, of this Act. Except as otherwise provided in the articles of organization or the regulations, for any meeting of the members at which any of the matters set forth in Section D, Article 2.23, of this Act are to be considered, written or printed notice stating the place, day, and hour of the meeting and describing the purpose or purposes of such meeting shall be delivered to the members not less than 10 nor more than 60 days before the meeting, either personally or by mail.

D. Except as otherwise provided in the articles of organization or the regulations, if the limited liability company has managers, meetings of members shall be held on written or printed notice, stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, which notice shall be delivered to the members not less than 10 or more than 60 days before the meeting, either personally or by mail.

TLLCA 2.12A

. . . If the management of the limited liability company is reserved in whole or in part to the members, Articles . . .

2.19. . . of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.

Revisor's Note:

Section 101.352 states the requirements for notice of regular and special meetings of the members, governing authority, and committees of the governing authority of a limited liability company. Except in certain cases, existing law leaves notice requirements solely to the provisions of the regulations. This change provides a new default rule.

Revised Law:

Sec. 101.353. QUORUM. A majority of all of the governing persons, members, or committee members of a limited liability company constitutes a quorum for the purpose of transacting business at a meeting of the governing authority, members, or committee of the company, as appropriate.

Source Law:

TLLCA 2.23.A

Art. 2.23. A. Except as otherwise provided in this Act, in the articles of organization, or in the regulations, a majority of the members, managers, or members of any committee constitutes a quorum for the transaction of business at any meeting of the members, the managers, or the committee. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.354. VOTING RIGHTS. Each governing person, member, or committee member of a limited liability company has an equal vote at a meeting of the governing authority, members, or committee of the company, as appropriate.

Source Law:

TLLCA 2.23.F

F. Except as otherwise provided in the articles of organization or the regulations, for purposes of this Act, a "majority" of the members, managers, or any committee of the managers means more than one-half, by number, of all the members, managers, or members of the committee, as the case may be.

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation. This provision restates in a more direct manner the effect of the source law.

Revised Law:

Sec. 101.355. ACT OF GOVERNING AUTHORITY, MEMBERS, OR COMMITTEE. Except as provided by this title or Title 1, the affirmative vote of the majority of the governing persons, members, or committee members of a limited liability company present at a meeting at which a quorum is present constitutes an act of the governing authority, members, or committee of the company, as appropriate.

Source Law:

TLLCA 2.23.A & F

A. . . . Except as otherwise provided in the articles of organization or the regulations, an act of a majority of the members entitled to vote, the managers, or the members of a committee, who are present at a meeting of the members, the managers, or the committee at which a quorum is present is the act of the members, the managers, or the committee. . . .

Revisor's Note:

No substantive change is intended. This section of the revised law may be modified or waived by the company agreement or certificate of formation.

Revised Law:

Sec. 101.356. VOTES REQUIRED TO APPROVE CERTAIN ACTIONS. (a) Except as provided in this section or any other section in this title, an action of a limited liability company may be approved by the company's governing authority as provided by Section 101.355.

(b) Except as provided by Subsection (c), (d), or (e) or any other section in this title, an action of a limited liability company not apparently for carrying out the ordinary course of business of the company must be approved by the affirmative vote of the majority of all of the company's governing persons.

(c) Except as provided by Subsection (d) or (e) or any other section in this title, a fundamental business transaction of a limited liability company, or an action that would make it impossible for a limited liability company to carry out the ordinary business of the company, must be approved by the affirmative vote of the majority of all of the company's members.

(d) Except as provided by Subsection (e) or any other section of this title, an amendment to the certificate of formation of a limited liability company must be approved by the affirmative vote of all of the company's members.

(e) A requirement that an action of a limited liability company must be approved by the company's members does not apply during the period prescribed by Section 101.101(b).

Source Law:

TLLCA 2.23.D, E, G & H

D. Except as provided in the articles of organization or the regulations, the affirmative vote, approval, or consent of a majority of all the members is required to:

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

(2) issue any additional membership interests in the limited liability company subsequent to the issuance of membership interests to the initial members of the limited liability company;

(3) approve any merger, consolidation, share or interest exchange, or other transaction authorized by or subject to the provisions of Part Ten of this Act;

(4) voluntarily cause the dissolution of the limited liability company;

(5) authorize any transaction, agreement, or action on behalf of the limited liability company that is unrelated to its purpose as set forth in the regulations or articles of organization or that otherwise contravenes the regulations; or

(6) authorize any act that would make it impossible to carry on the ordinary business of the limited liability company.

E. Except as provided in the regulations, the affirmative vote, approval, or consent of a majority of all of the managers, if management of the limited liability company is vested in one or more managers, or of the members, if management of the limited liability company is reserved to the members, is required to take any action, other than an action listed in Section D of this Article, that is not apparently for the carrying on of the business of the limited liability company in the usual way.

G. Except as provided in the articles of organization or the regulations, if no capital has been paid into the limited liability company, a majority of the managers named in the articles of organization may amend the articles of organization or dissolve the limited liability company or if the management has been reserved to the members, a majority of the members named in the articles of organization may amend the articles of organization or dissolve the limited liability company. In such event, the persons adopting such amendments to the articles of organization or authorizing such dissolution shall sign and file with the Secretary of State the articles of amendment provided for in Articles 3.06 and 3.07 of this Act and the articles of dissolution provided for in Articles 6.05, 6.07, and 6.08 of this Act, as appropriate.

H. Except as provided in the articles of organization or the regulations, if any capital has been paid into the limited liability company, the affirmative vote, approval, or consent of all members is required to amend the articles of organization.

Revisor's Note:

The source of Section 101.356(c) is Art. 2.23D of the TLLCA. Art. 2.23D lists transactions that require approval of a majority of all members of the limited liability company. Certain transactions listed in Art. 2.23D have not been included in Section 101.356(c) in order to correct inconsistencies in the TLLCA. For example, Art. 2.23D specifies that changing the status of a limited liability company from one in which management is reserved to the members to one in which management is vested in managers, or vice versa, requires approval of a majority of the members. Yet, such a change would require an amendment to the articles of organization, which requires consent of all members. A second inconsistency is found in the provision of Art. 2.23D that provides for majority member authorization of an act that is unrelated to a limited liability company's purpose or that otherwise contravenes the regulations. Since amendment of the regulations requires the unanimous vote of the members, a majority of the members should not be able to authorize an act that contravenes the regulations. By eliminating these provisions, Section 101.356(c) eliminates these inconsistencies. The vote required to authorize the issuance of additional membership interests is addressed in Section 101.105. See the Revisor's Note under that section regarding the change in law in that respect. There are other provisions included in Art. 2.23D of the TLLCA that are not included in Section 101.356(c) but are addressed in other provisions of Chapter 101.

This section of the revised law may be modified or waived by the company agreement or certificate of formation.

Section 101.356(c) requires that a fundamental business transaction receive approval of a majority of the members and, if the limited liability company has managers, a majority of the managers. The requirement that a majority of the managers approve a fundamental business transaction is new. The sale of all or substantially all of the assets is not explicitly in the source law but can be inferred from the source law because such a transaction would usually make it impossible to carry on the ordinary business of the limited liability company.

Revised Law:

Sec. 101.357. MANNER OF VOTING. (a) A member of a limited liability company may vote:

- (1) in person; or
- (2) by a proxy executed in writing by the member.

(b) A manager or committee member of a limited liability company, if authorized by the company agreement, may vote:

(1) in person; or

(2) by a proxy executed in writing by the manager or committee member, as appropriate.

Source Law:

New and TLLCA 2.23.A

A. . . . Except as otherwise provided in the articles of organization or the regulations, any member may vote either in person or by proxy executed in writing by the member.

Revisor's Note:

The revised law adds provisions allowing a manager or committee member of a limited liability company, if authorized by the company agreement, to vote either in person or by proxy executed in writing.

Revised Law:

Sec. 101.358. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT. (a) This section applies only to an action required or authorized to be taken at an annual or special meeting of the governing authority, the members, or a committee of the governing authority of a limited liability company under this title, Title 1, or the governing documents of the company.

(b) Notwithstanding Sections 6.201 and 6.202, an action may be taken without holding a meeting, providing notice, or taking a vote if a written consent or consents stating the action to be taken is signed by the number of governing persons, members, or committee members of a limited liability company, as appropriate, necessary to have at least the minimum number of votes that would be necessary to take the action at a meeting at which each governing person, member, or committee member, as appropriate, entitled to vote on the action is present and votes.

Source Law:

TLLCA 2.23.B(1)

B. (1) Unless otherwise provided by the articles of organization or the regulations, any act required or permitted to be taken at any meeting of the members, the managers, or any committee may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the members, managers, or committee members, as the case may be, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all members, managers, or committee members, as the case may be, entitled to vote on the action were present and voted.

Revisor's Note:

No substantive change is intended.

(Sections 101.359-101.400 reserved for expansion)

SUBCHAPTER I. MODIFICATION OF DUTIES; INDEMNIFICATION

Revised Law:

Sec. 101.401. EXPANSION OR RESTRICTION OF DUTIES AND LIABILITIES. The company agreement of a limited liability company may expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person has to the company or to a member or manager of the company.

Source Law:

TLLCA 2.20.B

B. To the extent that at law or in equity, a member, manager, officer, or other person has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager, such duties and liabilities may be expanded or restricted by provisions in the regulations.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 101.402. PERMISSIVE INDEMNIFICATION, ADVANCEMENT OF EXPENSES, AND INSURANCE OR OTHER ARRANGEMENTS. (a) A limited liability company may:

- (1) indemnify a person;
- (2) pay in advance or reimburse expenses incurred by a person; and
- (3) purchase or procure or establish and maintain insurance or another arrangement to indemnify or hold harmless a person.

(b) In this section, "person" includes a member, manager, officer and other persons.

Source Law:

TLLCA 2.02.A

A. Each limited liability company shall have the power provided for a corporation under the TBCA and a limited partnership under the Texas Revised Limited Partnership Act.

TLLCA 2.20.A

A. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or in its regulations, a limited liability company shall have power to

indemnify members and managers, officers, and other persons and purchase and maintain liability insurance for such persons.

Revisor's Note:

No substantive change is intended. The revised law explicitly provides that a limited liability company may pay in advance or reimburse expenses incurred by a person, which is implicit in the source law by virtue of the incorporation of the powers of a business corporation.

(Sections 101.403-101.450 reserved for expansion)

SUBCHAPTER J. DERIVATIVE PROCEEDINGS

Revised Law:

Sec. 101.451. DEFINITIONS. In this subchapter:

(1) "Derivative proceeding" means a civil suit in the right of a domestic limited liability company or, to the extent provided by Section 101.462, in the right of a foreign limited liability company.

(2) "Member" includes a person who beneficially owns a membership interest through a voting trust or a nominee on the person's behalf.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.A

A. Certain Definitions. For purposes of this Article:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Section K of this Article, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

Revisor's Note:

The revised law incorporates the provisions of the TBCA referred to in TLLCA 8.17.A and tailors them to apply to limited liability companies. No substantive change is intended.

Revised Law:

Sec. 101.452. STANDING TO BRING PROCEEDING. A member may not institute or maintain a derivative proceeding unless:

(1) the member:

(A) was a member of the limited liability company at the time of the act or omission complained of; or

(B) became a member by operation of law from a person that was a member at the time of the act or omission complained of; and

(2) the member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.B

B. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder by operation of law from a person that was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.453. DEMAND. (a) A member may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the limited liability company stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the limited liability company take suitable action.

(b) The waiting period required by Subsection (a) before a derivative proceeding may be instituted is not required if:

(1) the member has been previously notified that the demand has been rejected by the limited liability company;

(2) the limited liability company is suffering irreparable injury; or

(3) irreparable injury to the limited liability company would result by waiting for the expiration of the 90-day period.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.C

C. Demand. No shareholder may commence a derivative proceeding until:

(1) a written demand is filed with the corporation setting forth with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the corporation take suitable action; and

(2) 90 days have expired from the date the demand was made, unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation is being suffered or would result by waiting for the expiration of the 90-day period.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.454. DETERMINATION BY GOVERNING OR INDEPENDENT PERSONS. (a) The determination of how to proceed on allegations made in a demand or petition relating to a derivative proceeding must be made by an affirmative vote of the majority of:

(1) the independent and disinterested governing persons present at a meeting of the governing authority at which interested governing persons are not present at the time of the vote if the independent and disinterested governing persons constitute a quorum of the governing authority;

(2) a committee consisting of two or more independent and disinterested governing persons appointed by the majority of one or more independent and disinterested governing persons present at a meeting of the governing authority, regardless of whether the independent and disinterested governing persons constitute a quorum of the governing authority; or

(3) a panel of one or more independent and disinterested persons appointed by the court on a motion by the limited liability company listing the names of the persons to be appointed and stating that, to the

best of the limited liability company's knowledge, the persons to be appointed are disinterested and qualified to make the determinations contemplated by Section 101.458.

(b) The court shall appoint a panel under Subsection (a)(3) if the court finds that the persons recommended by the limited liability company are independent and disinterested and are otherwise qualified with respect to expertise, experience, independent judgment, and other factors considered appropriate by the court under the circumstances to make the determinations. A person appointed by the court to a panel under this section may not be held liable to the limited liability company or the limited liability company's members for an action taken or omission made by the person in that capacity, except for acts or omissions constituting fraud or willful misconduct.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

- (1) a reference to a corporation includes a limited liability company;
- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.H

H. Determination by Directors or Independent Persons. The determination described in Section F of this Article must be made by:

- (1) a majority vote of independent and disinterested directors present at a meeting of the board of directors at which interested directors are not present (at the time of the vote) if the independent and disinterested directors constitute a quorum of the board of directors;
- (2) a majority vote of a committee consisting of two or more independent and disinterested directors appointed by a majority vote of one or more independent and disinterested directors

present at a meeting of the board of directors, whether or not the independent and disinterested directors so acting constitute a quorum of the board of directors; or

(3) a panel of one or more independent and disinterested persons appointed by the court on a motion by the corporation setting forth the names of the persons to be so appointed together with a statement that to the best of its knowledge the persons so proposed are disinterested persons and qualified to make the determinations contemplated by Section F of this Article. Such panel shall be appointed if the court finds that such persons are independent and disinterested persons and are otherwise qualified in regard to expertise, experience, independent judgment, and other factors deemed appropriate by the court under the circumstances to make such determinations. Persons appointed by the court shall have no liability to the corporation or its shareholders for any action or omission taken by them in that capacity, absent fraud or willful misconduct.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.455. STAY OF PROCEEDING. (a) If the domestic or foreign limited liability company that is the subject of a derivative proceeding commences an inquiry into the allegations made in a demand or petition and the person or group of persons described by Section 101.454 is conducting an active review of the allegations in good faith, the court shall stay a derivative proceeding until the review is completed and a determination is made by the person or group regarding what further action, if any, should be taken.

(b) To obtain a stay, the domestic or foreign limited liability company shall provide the court with a written statement agreeing to advise the court and the member making the demand of the determination promptly on the completion of the review of the matter. A stay, on motion, may be reviewed every 60 days for the continued necessity of the stay.

(c) If the review and determination made by the person or group is not completed before the 61st day after the date on which the court orders the stay, the stay may be renewed for one or more additional 60-day periods if the domestic or foreign limited liability company provides the court and the member with a written statement of the status of the review and the reasons why a continued extension of the stay is necessary.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

- (1) a reference to a corporation includes a limited liability company;
- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.D(1)

D. Stay; Discovery. (1) If the domestic or foreign corporation commences an inquiry into the allegations made in a demand or petition and the person or group described in Section H of this Article is conducting an active review of the allegations in good faith, the court shall stay a derivative proceeding until the review is completed and a determination is made by the person or group as to what further action, if any, should be taken. To obtain a stay, the domestic or foreign corporation must provide the court with a written statement containing an undertaking to advise the court and the shareholder making the demand of the determination promptly on the completion of the review of the matter. A stay shall, on motion, be reviewed as to its continued necessity every 60 days thereafter. If the review and determination by the person or group described in Section H of this Article is not completed within 60 days, the stay may be renewed for one or more additional 60-day periods on the domestic or foreign corporation providing the court and the shareholder making the demand with a written statement of the status of the review and the reasons a continued extension of the stay is necessary.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.456. DISCOVERY. (a) If a domestic or foreign limited liability company proposes to dismiss a derivative proceeding under Section 101.458, discovery by a member after the filing of the derivative proceeding in accordance with this subchapter shall be limited to:

- (1) facts relating to whether the person or group of persons described by Section 101.458 is independent and disinterested;

(2) the good faith of the inquiry and review by the person or group; and

(3) the reasonableness of the procedures followed by the person or group in conducting the review.

(b) Discovery described by Subsection (a) may not be expanded to include a fact or substantive matter regarding the act, omission, or other matter that is the subject matter of the derivative proceeding. The scope of discovery may be expanded if the court determines after notice and hearing that a good faith review of the allegations for purposes of Section 101.458 has not been made by an independent and disinterested person or group in accordance with that section.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.D(2)

D. Stay; Discovery. . . .

(2) If a domestic or foreign corporation proposes to dismiss a derivative proceeding pursuant to Section F of this Article, discovery by a shareholder following the filing of the derivative proceeding in accordance with the provisions of this Article shall be limited to facts relating to whether the person or group described in Section H of this Article is independent and disinterested, the good faith of the inquiry and review by such person or group, and the reasonableness of the procedures followed by such person or group in conducting its review and will not extend to any facts or substantive

matters with respect to the act, omission, or other matter that is the subject matter of the action in the derivative proceeding. The scope of discovery may be expanded if the court determines after notice and hearing that a good faith review of the allegations for purposes of Section F of this Article has not been made by an independent and disinterested person or group in accordance with Section F of this Article.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written demand filed with the limited liability company under Section 101.453 tolls the statute of limitations on the claim on which demand is made until the earlier of:

(1) the 91st day after the date of the demand; or

(2) the 31st day after the date the limited liability company advises the member that the demand has been rejected or the review has been completed.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.E

E. Tolling of the Statute of Limitations. A written demand filed with the corporation under Section C of this Article tolls the statute of limitations on the claim on which demand is made until the earlier of (1) 90 days or (2) 30 days after the corporation advises the shareholder that the demand has been rejected or the review has been completed.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.458. DISMISSAL OF DERIVATIVE PROCEEDING. (a) A court shall dismiss a derivative proceeding on a motion by the limited liability company if the person or group of persons described by Section 101.454 determines in good faith, after conducting a reasonable inquiry and based on factors the person or group considers appropriate under the circumstances, that continuation of the derivative proceeding is not in the best interests of the limited liability company.

(b) In determining whether the requirements of Subsection (a) have been met, the burden of proof shall be on:

(1) the plaintiff member if:

(A) the majority of the governing authority consists of independent and disinterested persons at the time the determination is made;

(B) the determination is made by a panel of one or more independent and disinterested persons appointed under Section 101.454(a)(3); or

(C) the limited liability company presents prima facie evidence that demonstrates that the persons appointed under Section 101.454(a)(2) are independent and disinterested; or

(2) the limited liability company in any other circumstance.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.F

F. Dismissal of Derivative Proceeding. A court shall dismiss a derivative proceeding on a motion by the corporation if the person or group described in Section H of this Article determines in good faith, after conducting a reasonable inquiry and based on the factors as the person or group deems appropriate under the circumstances, that the continuation of the derivative proceeding is not in the best interests of the corporation. In determining whether the requirements of the previous sentence have been met, the burden of proof shall be on:

- (1) the plaintiff shareholder, if a majority of the board of directors consists of independent and disinterested directors at the time the determination is made or if the determination is made by a panel of one or more independent and disinterested persons appointed under Section H(3) of this Article; or
- (2) the corporation, in all other circumstances; provided that if the corporation presents prima facie evidence that demonstrates that the directors appointed pursuant to Section H(2) of this Article are independent and disinterested, the burden of proof is on the plaintiff shareholder.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.459. ALLEGATIONS IF DEMAND REJECTED. If a derivative proceeding is instituted after a demand is rejected, the petition must allege with particularity facts that establish that the rejection was not made in accordance with the requirements of Sections 101.454 and 101.458.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

- (1) a reference to a corporation includes a limited liability company;
- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.G

G. Commencement of Proceeding After Rejection of Demand. If a derivative proceeding is commenced after a demand is rejected, the petition must allege with particularity facts that establish that the rejection was not made in accordance with the requirements of Sections F and H of this Article.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.460. DISCONTINUANCE OR SETTLEMENT. (a) A derivative proceeding may not be discontinued or settled without court approval.

(b) The court shall direct that notice be given to the affected members if the court determines that a proposed discontinuance or settlement may substantially affect the interests of other members.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

- (1) a reference to a corporation includes a limited liability company;

- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.I

I. Discontinuance or Settlement. A derivative proceeding may not be discontinued or settled without the approval of the court. If the court determines that a proposed discontinuance or settlement may substantially affect the interest of other shareholders, it shall direct that notice be given to the affected shareholders.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.461. PAYMENT OF EXPENSES. (a) In this section, "expenses" means reasonable expenses incurred by a party in a derivative proceeding, including:

- (1) attorney's fees;
- (2) costs of pursuing an investigation of the matter that was the subject of the derivative proceeding; or
- (3) expenses for which the domestic or foreign limited liability company may be required to indemnify another person.

(b) On termination of a derivative proceeding, the court may order:

(1) the domestic or foreign limited liability company to pay the expenses the plaintiff incurred in the proceeding if the court finds the proceeding has resulted in a substantial benefit to the domestic or foreign limited liability company;

(2) the plaintiff to pay the expenses the domestic or foreign limited liability company or other defendant incurred in investigating and defending the proceeding if the court finds the proceeding has been instituted or maintained without reasonable cause or for an improper purpose; or

(3) a party to pay the expenses incurred by another party relating to the filing of a pleading, motion, or other paper if the court finds the pleading, motion, or other paper:

(A) was not well grounded in fact after reasonable inquiry;

(B) was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(C) was interposed for an improper purpose, such as to harass, cause unnecessary delay, or cause a needless increase in the cost of litigation.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.J

J. Payment of Expenses. (1) On termination of a derivative proceeding, the court may order:

(a) the domestic or foreign corporation to pay the expenses of the plaintiff incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the domestic or foreign corporation;

(b) the plaintiff to pay the expenses of the domestic or foreign corporation or any defendant incurred in investigating and defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(c) a party to pay the expenses incurred by another party (including the domestic or foreign corporation) because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper (i) was not well grounded in fact after reasonable inquiry, (ii) was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, or (iii) was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) For purposes of this section, "expenses" mean reasonable expenses incurred in the defense of a derivative proceeding, including without limitation:

(a) attorney's fees;

(b) costs in pursuing an investigation of the matter that was the subject of the derivative proceeding; and

(c) expenses for which the domestic or foreign corporation or a corporate defendant may be required to indemnify another person.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.462. APPLICATION TO FOREIGN LIMITED LIABILITY COMPANIES.

(a) In a derivative proceeding brought in the right of a foreign limited liability company, the matters covered by this subchapter are governed by the laws of the jurisdiction of organization of the foreign limited liability company, except for Sections 101.455, 101.460, and 101.461, which are procedural provisions and do not relate to the internal affairs of the foreign limited liability company.

(b) In the case of matters relating to a foreign limited liability company under Section 101.454, a reference to a person or group of persons described by that section refers to a person or group entitled under the laws of the jurisdiction of organization of the foreign limited liability company to review and dispose of a derivative proceeding. The standard of review of a decision made by the person or group to dismiss the derivative proceeding shall be governed by the laws of the jurisdiction of organization of the foreign limited liability company.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

- (1) a reference to a corporation includes a limited liability company;
- (2) a reference to a share includes a membership interest;
- (3) a reference to a shareholder includes a member;
- (4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;
- (5) a reference to articles of incorporation includes articles of organization; and
- (6) a reference to bylaws includes regulations.

TBCA 5.14.K

K. Application to Foreign Corporations. In any derivative proceeding brought in the right of a foreign corporation, the matters covered by this Article are governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for Sections D, I, and J of this Article, which are procedural and not matters relating to the internal affairs of the foreign corporation. In the case of matters relating to a foreign corporation under Section D of this Article, references to a person or group described in Section H of this Article are to be deemed to refer to a person or group entitled under the laws of the jurisdiction of incorporation of the foreign corporation to review and dispose of a derivative proceeding, and the standard of review of a decision by the person or group to dismiss the derivative proceeding is to be governed by the laws of the jurisdiction of incorporation of the foreign corporation.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

Revised Law:

Sec. 101.463. CLOSELY HELD LIMITED LIABILITY COMPANY. (a) In this section, "closely held limited liability company" means a limited liability company that has:

- (1) fewer than 35 members; and
- (2) no membership interests listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national securities association.

(b) Subject to Subsection (c), Sections 101.452-101.459 do not apply to a closely held limited liability company.

(c) If justice requires:

(1) a derivative proceeding brought by a member of a closely held limited liability company may be treated by a court as a direct action brought by the member for the member's own benefit; and

(2) a recovery in a direct or derivative proceeding by a member may be paid directly to the plaintiff or to the limited liability company if necessary to protect the interests of creditors or other members of the limited liability company.

Source Law:

TLLCA 8.12.A and C

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.

. . .

C. For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:

(1) a reference to a corporation includes a limited liability company;

(2) a reference to a share includes a membership interest;

(3) a reference to a shareholder includes a member;

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company is reserved in whole or in part to the members, a member who manages the limited liability company;

(5) a reference to articles of incorporation includes articles of organization; and

(6) a reference to bylaws includes regulations.

TBCA 5.14.L

L. Closely Held Corporations. (1) The provisions of Sections B through H of this Article are not applicable to a closely held corporation. If justice requires:

(a) a derivative proceeding brought by a shareholder of a closely held corporation may be treated by a court as a direct action brought by the shareholder for his own benefit; and

(b) a recovery in a direct or derivative proceeding by a shareholder may be paid either directly to the plaintiff or to the corporation if necessary to protect the interests of creditors or other shareholders of the corporation.

(2) For purposes of this section, a "closely held corporation" means a corporation:

(a) with less than 35 shareholders; and

(b) that has no shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national securities association.

Revisor's Note:

See Revisor's Note to Section 101.451. No substantive change is intended.

(Sections 101.464-101.500 reserved for expansion)

SUBCHAPTER K. SUPPLEMENTAL RECORDKEEPING REQUIREMENTS

Revised Law:

Sec. 101.501. SUPPLEMENTAL RECORDS REQUIRED FOR LIMITED LIABILITY COMPANIES. (a) In addition to the books and records required to be kept under Section 3.151, a limited liability company shall keep at its principal office in the United States, or make available to a person at its principal office in the United States not later than the fifth day after the date the person submits a written request to examine the books and records of the company under Section 3.152(a) or 101.502:

(1) a current list of each member of a class or group of membership interests in the company;

(2) a copy of the company's federal, state, and local tax information or income tax returns for each of the six preceding tax years;

(3) a copy of the company's certificate of formation, including any amendments to or restatements of the certificate of formation;

(4) if the company agreement is in writing, a copy of the company agreement, including any amendments to or restatements of the company agreement;

(5) an executed copy of any powers of attorney;

(6) a copy of any document that establishes a class or group of members of the company as provided by the company agreement; and

(7) except as provided by Subsection (b), a written statement of:

(A) the amount of a cash contribution and a description and statement of the agreed value of any other contribution made or agreed to be made by each member;

(B) the dates any additional contributions are to be made by a member;

(C) any event the occurrence of which requires a member to make additional contributions;

(D) any event the occurrence of which requires the winding up of the company; and

(E) the date each member became a member of the company.

(b) A limited liability company is not required to keep or make available at its principal office in the United States a written statement of the information required by Subsection (a)(7) if that information is stated in the company agreement.

(c) A limited liability company shall keep at its registered office located in this state and make available to a member of the company on reasonable request the street address of the company's principal office in the United States in which the records required by this section and Section 3.151 are maintained or made available.

Source Law:

TLLCA 2.22.A & C

A. A domestic limited liability company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request under Section E of this Article:

(1) a current list that states:

(a) the name and mailing address of each member;

(b) the percentage or other interest in the limited liability company owned by each member; and

(c) if one or more classes or groups are established in or under the articles of organization or regulations, the names of the members who are members of each specified class or group;

(2) copies of the federal, state, and local information or income tax returns for each of the limited liability company's six most recent tax years;

(3) a copy of the articles of organization and, if the regulations of the limited liability company are in writing, a copy of the regulations, copies of all amendments or restatements of the articles of organization or regulations, executed copies of any powers of attorney, and copies of any document that creates, in the manner provided by the articles of organization or regulations, classes or groups of members;

(4) unless contained in the articles of organization or regulations, a written statement of:

(a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by

each member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the member has agreed to make in the future as an additional contribution;

(b) the times at which additional contributions are to be made or events requiring additional contributions to be made;

(c) events requiring the limited liability company to be dissolved and its affairs wound up; and

(d) the date on which each member in the limited liability company became a member; and

(5) correct and complete books and records of account of the limited liability company.

C. A limited liability company shall keep in its registered office in Texas and make available to members on reasonable request the street address of its principal United States office in which the records required by this section are maintained or will be available.

Revisor's Note:

No substantive change is intended. The requirement that a limited liability company maintain books and records of account is found in Section 3.151 pertaining to all filing entities.

Revised Law:

Sec. 101.502. RIGHT TO EXAMINE RECORDS AND CERTAIN OTHER INFORMATION. (a) A member of a limited liability company or an assignee of a membership interest in a limited liability company, or a representative of the member or assignee, on written request and for a proper purpose, may examine and copy at any reasonable time and at the member's or assignee's expense:

(1) records required under Sections 3.151 and 101.501; and

(2) other information regarding the business, affairs, and financial condition of the company that is reasonable for the person to examine and copy.

(b) A limited liability company shall provide to a member of the company or an assignee of a membership interest in the company, on written request by the member or assignee sent to the company's principal office in the United States or, if different, the person and address designated in the company agreement, a free copy of:

(1) the company's certificate of formation, including any amendments to or restatements of the certificate of formation;

(2) if in writing, the company agreement, including any amendments to or restatements of the company agreement; and

(3) any tax returns described by Section 101.501(a)(2).

Source Law:

TLLCA 2.22.D & E

D. A member or an assignee of a membership interest, on written request stating the purpose, may examine and copy, in person or by the member's or assignee's representative, at any reasonable time, for any proper purpose, and at the member's expense, records required to be kept under this section and other information regarding the business, affairs, and financial condition of the limited liability company as is just and reasonable for the person to examine and copy.

E. On the written request by any member or an assignee of a membership interest made to the person and address designated in the regulations, the limited liability company shall provide to the requesting member or assignee without charge true copies of:

(1) the articles of organization and regulations and all amendments or restatements; and

(2) any of the tax returns described in Subdivision (2) of Section A of this Article.

Revisor's Note:

The revised law allows a representative of a member or a member's assignee to request the records specified in this section. No substantive change is intended.

(Sections 101.503-101.550 reserved for expansion)

SUBCHAPTER L. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Revised Law:

Sec. 101.551. PERSONS ELIGIBLE TO WIND UP COMPANY. After an event requiring the winding up of a limited liability company unless a revocation as provided by Section 11.151 or a cancellation as provided by Section 11.152 occurs, the winding up of the company must be carried out by:

(1) the company's governing authority or one or more persons, including a governing person, designated by the governing authority, the members or the governing documents;

(2) if the event requiring the winding up of the company is the termination of the continued membership of the last remaining member of the company, the legal representative or successor of the last remaining member or one or more persons designated by the legal representative or successor; or

(3) a person appointed by the court to carry out the winding up of the company under Section 11.054, 11.405, 11.409, or 11.410.

Source Law:

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. In addition, a court of competent jurisdiction, on cause shown, may wind up the limited liability company's affairs on application of any member or the member'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.

Revisor's Note:

No substantive change is intended. The language found in Section 101.551(2) clarifies what is implied in the source law, namely that the legal representative or successor of the last remaining member may carry out the winding up process.

Revised Law:

Sec. 101.552. APPROVAL OF VOLUNTARY WINDING UP, REVOCATION, CANCELLATION, OR REINSTATEMENT. A majority vote of all of the members of a limited liability company or, if the limited liability company has no members, a majority vote of all of the managers of the company is required to approve:

- (1) a voluntary winding up of the company under Chapter 11;
- (2) a revocation of a voluntary decision to wind up the company under Section 11.151;
- (3) a cancellation of an event requiring the winding up of the company under Section 11.152; or
- (4) a reinstatement of a terminated company under Section 11.202.

Source Law:

TLLCA 6.01.A & B

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;

(4) if no capital has been paid into the limited liability company, the act of a majority of the managers or members named in the articles of organization 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.

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.

TLLCA 6.06

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.

Revisor's Note:

Section 101.552 provides that the requirements for approval of the voluntary winding up of a limited liability company, a revocation of that winding up, the cancellation of an event requiring the winding up, or a reinstatement of a terminated

limited liability company are a majority vote of the limited liability company's members or, if the company has no members, a majority vote of all of the company managers. Existing law requires a majority vote of the members of the limited liability company to voluntarily dissolve the company, the written consent of all members to revoke voluntary dissolution, and the vote of all members (or a different voting requirement stated in the company regulations) to continue the business of the company following certain events of dissolution. There is no specific provision in the TLLCA governing reinstatement of a terminated limited liability company. The requirement in the source law of a unanimous vote to continue after events of dissolution was based on federal income tax concerns that are no longer relevant. The trend in limited liability company statutes in other states is to eliminate the unanimity requirement for continuation after an event of dissolution. The changes made by the Code result in the standardization of the voting requirement for these actions to a majority of the members. The alternative requirement of the approval of the actions by the managers of the limited liability company if there are no members is intended to parallel the source law provisions relating to manager approval when no capital has been paid into the company.