

Revised Law

Sec. 5.105. RENEWAL OF RESERVATION. A person may renew the person's reservation of a name under this subchapter for successive 120-day periods if, during the 30-day period preceding the expiration of that reservation, the person:

- (1) files a new application to reserve the name; and
- (2) pays the required filing fee. (TRLPA 1.04(b)

(part).)

Source Law

(b) . . . An applicant may reserve the same name for one or more successive 120-day periods by filing a new application and paying the applicable filing fee. . . .

Revisor's Note

Section 5.105 allows a person to renew a name reservation for successive 120-day periods if the person makes a new application for reservation of the name 30 days before the expiration of an effective reservation. Current statutory provisions do not allow for the renewal of the reservation and require a person to wait for the termination of the reservation's duration before making an application to reserve the name for an additional 120-day period.

Revised Law

Sec. 5.106. TRANSFER OF RESERVATION OF NAME. (a) A person may transfer the person's reservation of a name by filing with the secretary of state a notice of transfer.

(b) The notice of transfer must:

- (1) be signed by the person for whom the name is reserved; and
- (2) state the name and address of the person to whom the reservation is to be transferred. (TBCA 2.06.C; TLLCA 2.04.C; TNPCA 2.04A.B; TRLPA 1.04(b) (part).)

Source Law

[TBCA 2.06]

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

[TLLCA 2.04]

C. The right to the exclusive use of a specified company name so reserved may be transferred to any other person or limited liability company by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

[TNPCA 2.04A]

B. An application for name reservation or transfer of the exclusive use of a specified corporate name is subject to the procedures and period prescribed by Article 2.06, Texas Business Corporation Act.

[TRLPA 1.04]

(b) . . . The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer executed by the applicant for whom the name was reserved that specifies the name and address of the transferee

Revisor's Note

No substantive change is intended.

[Sections 5.107-5.150 reserved for expansion]

SUBCHAPTER D. REGISTRATION OF NAMES

Revised Law

Sec. 5.151. APPLICATION BY CERTAIN ENTITIES FOR REGISTRATION OF NAME. An organization that is authorized to do business in this state as a bank, trust company, savings association, or insurance company, or that is a foreign filing entity not registered to do business in this state under this code, may apply to register its name under this subchapter. (TBCA 2.07.A (part); TLLCA 8.12.A (part); TRLPA 1.05(a).)

Source Law

[TBCA 2.07]

A. Any corporation organized for the purpose of operating a bank, trust company, building and loan association or company, insurance company currently holding a valid certificate of authority to do business in the State of Texas, and any foreign corporation not authorized to transact

business in this State may register its corporate name under this Act,

[TLLCA 8.12]

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

[TRLPA 1.05]

(a) A foreign limited partnership not authorized to transact business in Texas may register a name for use in this state if the name complies with Section 1.03 of this Act.

Revisor's Note

Section 5.151 permits certain classes of organizations to register a name in the state of Texas. The section clarifies that all foreign filing entities, including foreign nonprofit corporations and foreign business trusts, may file such a registration. In practice, the Secretary of State permits those kinds of registrations by most foreign entities.

The reference to "building and loan association or company" has been modernized to refer to "savings association."

Revised Law

Sec. 5.152. APPLICATION FOR REGISTRATION OF NAME. (a) To register a name under this subchapter, an organization must file an application with the secretary of state.

(b) The application must:

(1) state that the organization validly exists and is doing business;

(2) contain a brief statement of the nature of the organization's business;

(3) set out:

(A) the name of the organization;

(B) the name of the jurisdiction under whose laws the organization is formed; and

(C) the date the organization was formed; and

(4) be accompanied by any required filing fee. (TBCA 2.07.B; TRLPA 1.05(b).)

Source Law

[TBCA 2.07]

B. Such registration shall be made by:

(1) Filing with the Secretary of State:

(a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and

(b) A certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the Secretary of State of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the Secretary of State the required registration fee.

[TRLPA 1.05]

(b) A name may be registered under this section by paying the filing fee and filing with the secretary of state:

(1) an application for registration executed by a general partner of the foreign limited partnership and setting forth:

(A) the name of the foreign limited partnership;

(B) the state under the laws of which it is formed;

(C) the date of its formation;

(D) a statement that it is carrying on or doing business; and

(E) a brief statement of the nature of the business in which it is engaged; and

(2) a certificate stating that the foreign limited partnership is in good standing under the laws of the state under which it is formed, executed by the secretary of state of that state or by the state official who has custody of the records pertaining to limited partnerships formed

under the laws of that state.

Revisor's Note

Existing law generally requires a foreign filing entity not authorized to transact business in Texas to furnish a certificate evidencing its good standing under the laws of its jurisdiction of formation in connection with the registration by the entity of a name in Texas. Section 5.152 of the code eliminates this requirement. However, the foreign filing entity must include a statement in its application to register that the entity validly exists and is doing business.

Revised Law

Sec. 5.153. CERTAIN REGISTRATIONS PROHIBITED; EXCEPTIONS.

(a) The secretary of state may not register a name that is the same as, or that the secretary of state determines to be deceptively similar or similar to:

- (1) the name of an existing filing entity;
- (2) the name of a foreign filing entity that is registered under Chapter 9;
- (3) a name that is reserved under Subchapter C; or
- (4) a name that is registered under this subchapter.

(b) Subsection (a) does not apply if:

- (1) the other entity or the person for whom the name is reserved or registered, as appropriate, consents in writing to the registration of the similar name; or
- (2) the applicant is a bank, trust company, savings association, or insurance company that has been in continuous existence from a date that precedes the date the conflicting name is filed with the secretary of state. (TBCA 2.07.A (part); TLLCA 8.12.A (part).)

Source Law

[TBCA 2.07]

A. . . . provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State or the name of any foreign corporation authorized to transact business in this State or any corporate name reserved or registered under this Act. Provided, however, that any bank, trust company, building and loan association, or insurance company will not be prohibited from registering its corporate name even if

the corporate name may be deemed to be the same as or deceptively similar to an otherwise authorized corporate name, if such bank, trust company, building and loan association, or insurance company was duly organized on, and in continual existence from, a date preceding the date the conflicting corporate name was authorized by the Secretary of State under this Act.

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 5.151, no substantive change is intended.

Revised Law

Sec. 5.154. DURATION OF REGISTRATION OF NAME. The registration of a name under this subchapter is effective until the earlier of:

- (1) the first anniversary of the date the application is accepted for filing; or
- (2) the date the entity files with the secretary of state a written notice of withdrawal of the registration. (TBCA 2.07.C; TLLCA 8.12.A (part); TRLPA 1.05(c).)

Source Law

[TBCA 2.07]

C. Such registration shall be effective for a period of one year from the date on which the application for registration is filed, unless voluntarily withdrawn by the filing of a written notice thereof with the Secretary of State.

[TLLCA 8.12]

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

[TRLPA 1.05]

(c) The registration is effective for one year after the date on which the

application is filed, unless it is voluntarily withdrawn before expiration by the filing of written notice of withdrawal with the secretary of state.

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 5.151, no substantive change is intended.

Revised Law

Sec. 5.155. RENEWAL OF REGISTRATION. A person may renew the person's registration of a name under this subchapter for successive one-year periods if, during the 90-day period preceding the expiration of that registration, the person:

- (1) files an application to renew the registration of the name; and
- (2) pays the required filing fee. (TBCA 2.08; TRLPA 1.05(d).)

Source Law

[TBCA]

2.08.A. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by filing annually an application for renewal in the manner prescribed for the filing of an original application. Such renewal application shall be filed during the ninety (90) days preceding the expiration date of the then current registration.

[TRLPA 1.05]

(d) A foreign limited partnership that has in effect a registration of a name may renew that registration by paying the filing fee and filing an application for renewal with the secretary of state in the manner prescribed for filing an original application during the 90-day period preceding the expiration date of the registration.

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 5.151, no substantive change is intended.

[Sections 5.156-5.200 reserved for expansion]

SUBCHAPTER E. REGISTERED AGENTS AND REGISTERED OFFICES

Revised Law

Sec. 5.201. DESIGNATION AND MAINTENANCE OF REGISTERED AGENT AND REGISTERED OFFICE. (a) Each filing entity and each foreign filing entity shall designate and continuously maintain in this state:

- (1) a registered agent; and
- (2) a registered office.

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who is a resident of this state; or

(B) a domestic entity or a foreign entity that is registered to do business in this state; and

(3) must maintain a business office at the same address as the entity's registered office.

(c) The registered office:

(1) must be located at a street address where process may be personally served on the entity's registered agent;

(2) is not required to be a place of business of the filing entity or foreign filing entity; and

(3) may not be solely a mailbox service or a telephone answering service. (TBCA 2.09, 2.11.A (part), 8.08, 8.10.A (part); TLLCA 2.05, 2.08.A (part); TNPCA 2.05, 2.07.A (part), 8.07, 8.09.A (part); TREITA 5.10(A), 5.20(A) (part); TRLPA 1.06(a), 1.08(a) (part), 9.04; TRPA 10.05(a), (j) (part).)

Source Law

[TBCA]

2.09. A. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State which has a business office identical with such registered office.

[TBCA 2.11]

A. . . . the registered agent of the

corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

[TBCA]

8.08.A. Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State:

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

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

[TBCA 8.10]

A. . . . the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

[TLLCA]

2.05.A. Each limited liability company or foreign limited liability company subject to this Act shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a person organized under or authorized to transact business in this State which has a business office identical with such registered office.

[TLLCA 2.08]

A. . . . the registered agent shall be

agents of a limited liability company or foreign limited liability company upon whom any process, notice, or demand required or permitted by law to be served upon the limited liability company or foreign limited liability company may be served.

[TNPCA]

2.05. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this State which has a business office identical with such registered office.

[TNPCA 2.07]

A. . . . the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. . . .

[TNPCA]

8.07.A. Each foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation whether for profit or not for profit, authorized to transact business or conduct affairs in this

State, having an office identical with such registered office.

[TNPCA 8.09]

A. . . . the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function is performed by a committee, service may be had on any member thereof.

[TREITA 5.10]

(A) Each real estate investment trust shall have and continuously maintain in this state:

(1) a registered office that may be, but need not be, the same as the principal office and place of business of the real estate investment trust; and

(2) a registered agent that may be either:

(a) an individual resident in this state whose business office is the same as the registered office of the real estate investment trust; or

(b) a domestic corporation or real estate investment trust or a foreign corporation authorized to transact business in this state that has a business office that is the same as the registered office of the real estate investment trust.

[TREITA 5.20]

(A) . . . the registered agent of the real estate investment trust are agents of the real estate investment trust on whom any process, notice, or demand required or permitted by law to be served on the real estate investment trust may be served.

[TRLPA 1.06]

(a) A limited partnership or foreign limited partnership subject to this Act shall have and maintain in Texas:

(1) a registered office, which

need not be a place of its business in Texas;
and

(2) a registered agent for service of process on the partnership, which may be:

(A) an individual who is a resident of Texas and whose business office is the same as the partnership's registered office; or

(B) a domestic corporation or a foreign corporation that has a certificate of authority to transact business in Texas and a business office the same as the partnership's registered office.

[TRLPA 1.08]

(a) . . . the registered agent of a limited partnership are agents of the limited partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the limited partnership.

[TRLPA]

9.04. Each foreign limited partnership is subject to Section 1.06 of this Act.

[TRPA 10.05]

(a) A foreign limited liability partnership subject to this Act shall have and maintain in Texas:

(1) a registered office, which need not be a place of its business in Texas;
and

(2) a registered agent for service of process on the foreign limited liability partnership, which may be:

(A) an individual who is a resident of Texas and whose business office is the same as the foreign limited liability partnership's registered office; or

(B) a domestic corporation or a foreign corporation that has a certificate of authority to transact business in Texas and a business office the same as the foreign limited liability partnership's registered office.

(j) . . . the registered agent of a

foreign limited liability partnership registered in Texas are agents of the foreign limited liability partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

Revisor's Note

Section 5.201 requires each filing entity and foreign filing entity to designate and maintain a registered agent and registered office address in this state. The section defines a registered agent and sets forth the requirements of a registered agent and a registered office. The requirements of a registered agent for a business corporation, limited partnership, and limited liability company vary under current law. Section 5.201 makes the requirements uniform. The requirements for a registered agent and office in the Texas Non-Profit Corporation Act and Texas Business Corporation Act are incorporated into the Cooperative Association Act, Texas Professional Corporation Act, and Texas Professional Association Act and are enforced by the Secretary of State.

Subsections (c)(1) and (3) codify 1 T.A.C. 79.28, in part, and make explicit that the registered office address must include a street address where process may be personally served on the entity's registered agent and that such location not be solely the location of a business providing the entity with mailbox service or telephone answering service. Subsection (c)(2) is derived from current statutory provisions.

Unlike Article 2.09, Texas Business Corporation Act, or Section 1.06, Texas Revised Limited Partnership Act, Section 5.201 permits any entity, not just a corporation, to serve as a registered agent for a corporation, which follows the more modern provisions of the TLLCA.

Revised Law

Sec. 5.202. CHANGE BY ENTITY TO REGISTERED OFFICE OR REGISTERED AGENT. (a) A filing entity or foreign filing entity may change its registered office, its registered agent, or both by filing a statement of the change in accordance with Chapter 4.

- (b) The statement must contain:
- (1) the name of the entity;
 - (2) the name of the entity's registered agent;
 - (3) the street address of the entity's registered agent;
 - (4) if the change relates to the registered agent, the name of the entity's new registered agent;
 - (5) if the change relates to the registered office, the street address of the entity's new registered office;
 - (6) a recitation that the change specified in the statement is authorized by the entity; and
 - (7) a recitation that the street address of the registered office and the street address of the registered agent's business are the same.
- (c) On acceptance of the statement by the filing officer, the statement is effective as an amendment to the appropriate provision of:
- (1) the filing entity's certificate of formation; or
 - (2) the foreign filing entity's registration. (TBCA 2.10.A, C, 8.09.A, C; TLLCA 2.06.A, C; TNPCA 2.06.A, C; TREITA 5.10(B); TRLPA 1.06(b), (d), (e); TRPA 10.05(b).)

Source Law

[TBCA 2.10]

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation.
- (2) The post-office address of its then registered office.
- (3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If its registered agent is to be changed, the name of its successor registered agent.
- (6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.
- (7) That such change was authorized by its Board of Directors or by an

officer of the corporation so authorized by the Board of Directors.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

[TBCA 8.09]

A. A foreign corporation authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

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

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors.

C. Upon the filing of such statement by the Secretary of State, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

[TLLCA 2.06]

A. A limited liability company or foreign limited liability company subject to this Act may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of

State a statement setting forth:

(1) The name of the limited liability company.

(2) The post office address of its then registered office.

(3) If the post office address of its registered office is to be changed, the post office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

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

(7) That such change was authorized by its members or managers.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

[TNPCA 2.06]

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the post-office address of its registered office and the post-office address of the business office of its

registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

[TREITA 5.10]

(B) A real estate investment trust may change its registered office, its registered agent, or both, on filing with the county clerk of the county where the declaration of trust was filed a statement that is executed by an officer on behalf of the real estate investment trust and that sets forth:

(1) the name of the real estate investment trust;

(2) the post-office address of the registered office of the real estate investment trust;

(3) if the post-office address of the registered office of the real estate investment trust is to be changed, the post-office address to which the registered office is to be changed;

(4) the name of the registered agent of the real estate investment trust;

(5) if the registered agent of the real estate investment trust is to be changed, the name of the successor registered agent;

(6) a statement that the post-office address of the registered office of the real estate investment trust or the post-office address of the business office of the registered agent, as changed, will be the same; and

(7) a statement that the proposed change was authorized by the trust managers of the real estate investment trust or by an

officer of the real estate investment trust who is authorized by the trust managers to make a decision regarding the proposed change.

[TRLPA 1.06]

(b) A limited partnership or foreign limited partnership subject to this Act may change its registered office, its registered agent, or both, by paying the filing fee and filing with the secretary of state a statement and a duplicate copy of the statement, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the limited partnership;

(2) the street address of its registered office;

(3) the street address to which its registered office is to be changed, if applicable;

(4) the name of its registered agent;

(5) the name of its successor registered agent, if applicable;

(6) a provision that the street address of its registered office and the street address of the business office of its registered agent, as changed, will be the same; and

(7) a provision that the change was authorized by the limited partnership.

(d) On the filing of the statement by the secretary of state, the change of address of the registered office, the appointment of a new registered agent, or both, as the case may be, become effective.

(e) Filing of the statement amends the certificate of limited partnership or registration as a foreign limited partnership regarding the information required by Subdivision (2) of Subsection (a) of Section 2.01 or Subdivision (4) of Subsection (a) of Section 9.02 of this Act, as appropriate.

[TRPA 10.05]

(b) A foreign limited liability partnership subject to this Act may change its registered office, its registered agent, or both, by paying the filing fee and filing with the secretary of state a statement and a duplicate copy of the statement, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the foreign limited liability partnership;

(2) the street address of its registered office;

(3) the street address to which its registered office is to be changed, if applicable;

(4) the name of its registered agent;

(5) the name of its successor registered agent, if applicable;

(6) a provision that the street address of its registered office and the street address of the business office of its registered agent, as changed, will be the same; and

(7) a provision that the change was authorized by the foreign limited liability partnership.

Revisor's Note

Except as described in the Revisor's Note to Section 5.201, no substantive change is intended. The revised law eliminates confusing references to "post office address" and replaces them with "street address" to be consistent with Section 5.201.

Revised Law

Sec. 5.203. CHANGE BY REGISTERED AGENT TO NAME OR ADDRESS OF REGISTERED OFFICE. (a) The registered agent of a filing entity or a foreign filing entity may change its name, its address as the address of the entity's registered office, or both by filing a statement of the change in accordance with Chapter 4.

(b) The statement must be signed by the registered agent, or a person authorized to sign the statement on behalf of the registered agent, and must contain:

(1) the name of the entity represented by the registered agent;

(2) the name of the entity's registered agent and the

address at which the registered agent maintained the entity's registered office;

(3) if the change relates to the name of the registered agent, the new name of that agent;

(4) if the change relates to the address of the registered office, the new address of that office; and

(5) a recitation that written notice of the change was given to the entity at least 10 days before the date the statement is filed.

(c) On acceptance of the statement by the filing officer, the statement is effective as an amendment to the appropriate provision of:

(1) the filing entity's certificate of formation; or

(2) the foreign filing entity's registration.

(d) A registered agent may file a statement under this section that applies to more than one entity. (TBCA 2.10-1.A, C; TLLCA 2.07.A, C; TNPCA 2.06A.A, C; TREITA 5.10(F); TRLPA 1.06(h), (i) (part); TRPA 10.05(h), (i) (part).)

Source Law

[TBCA 2.10-1]

A. The location of the registered office in Texas for a corporation, domestic or foreign, may be changed from one address to another upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation represented by such registered agent.

(2) The address at which such registered agent has maintained the registered office for said corporation.

(3) The new address at which such registered agent will thereafter maintain the registered office for said corporation.

(4) A statement that notice of the change has been given to said corporation in writing at least ten (10) days prior to such filing.

C. The registered office of the corporation named in such statement shall be changed to the new address of the registered agent upon the filing of such statement by the Secretary of State.

[TLLCA 2.07]

A. The location of the registered office in Texas for a limited liability

company or foreign limited liability company subject to this Act may be changed from one address to another upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the limited liability company or foreign limited liability company represented by such registered agent.

(2) The address at which such registered agent has maintained the registered office for the limited liability company or foreign limited liability company.

(3) The new address at which such registered agent will thereafter maintain the registered office for the limited liability company or foreign limited liability company.

(4) A statement that notice of the change has been given to said limited liability company or foreign limited liability company in writing at least ten (10) days prior to such filing.

C. The registered office of the limited liability company or foreign limited liability company named in such statement shall be changed to the new address of the registered agent upon the filing of such statement by the Secretary of State.

[TNPCA 2.06A]

A. The location of the registered office in this State for a corporation may be changed from one address to another by filing in the office of the Secretary of State a statement setting forth:

(1) the name of the corporation represented by the registered agent;

(2) the street address at which the registered agent has maintained the registered office for that corporation;

(3) the new street address at which the registered agent will maintain the registered office for that corporation; and

(4) a statement that notice of the change has been given to the corporation in writing at least ten (10) days before the date of the filing.

C. The registered office of the corporation named in the statement shall be changed to the new street address of the registered agent on the filing of the statement by the Secretary of State.

[TREITA 5.10]

(F) The address of the location of the registered office in this state for a real estate investment trust may be changed to another address on filing with the county clerk of the county where the declaration of trust was filed a statement that is executed by the registered agent for the real estate investment trust, or if the agent is a corporation or real estate investment trust, by an officer on behalf of the corporation or the real estate investment trust, and that sets forth:

(1) the name of the real estate investment trust represented by the registered agent;

(2) the address at which the registered agent has maintained the registered office for the real estate investment trust;

(3) the new address at which the registered agent will maintain the registered office for the real estate investment trust; and

(4) a statement that written notice of the change of address has been given to the real estate investment trust at least 10 days before the filing of the statement required by this Section.

[TRLPA 1.06]

(h) The location of the registered office in Texas for a limited partnership or foreign limited partnership may be changed from one address to another by paying the filing fee to the secretary of state and filing with the secretary of state a statement and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the partnership

represented by the registered agent;

(2) the address at which the registered agent has maintained the registered office;

(3) the new address at which the registered agent will maintain the registered office; and

(4) a statement that written notice of the change has been given to the partnership at least 10 days before the date of the filing.

(i) . . . If the registered agent is simultaneously filing statements for more than one limited partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment. The address of the registered office of the limited partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the certificate of limited partnership or registration as a foreign limited partnership regarding the information required by Subdivision (2) of Subsection (a) of Section 2.01 or Subdivision (4) of Subsection (a) of Section 9.02 of this Act, as appropriate, and no further action is required under Section 2.02 of this Act.

[TRPA 10.05]

(h) The location of the registered office in Texas for a foreign limited liability partnership may be changed from one address to another by paying the filing fee to the secretary of state and filing with the secretary of state a statement and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the foreign limited liability partnership represented by the registered agent;

(2) the address at which the

registered agent has maintained the registered office;

(3) the new address at which the registered agent will maintain the registered office; and

(4) a statement that written notice of the change has been given to the foreign limited liability partnership at least 10 days before the date of the filing.

(i) . . . If the registered agent is simultaneously filing statements for more than one foreign limited liability partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. The address of the registered office of the foreign limited liability partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5) and no further action is required under Section 10.02(k).

Revisor's Note

Section 5.203 permits a registered agent of a filing entity or foreign filing entity to change its address or name, or both, by filing a statement with the secretary of state. Current law provides no means for allowing a registered agent, such as a corporation or limited liability company, to update information relating to the registered agent's name when an amendment to the agent's organizational document effects a name change. Section 5.203 permits the information to be updated by the registered agent rather than the filing entity represented by the registered agent. Section 5.203 permits a registered agent to make a single filing relating to more than one entity.

Revised Law

Sec. 5.204. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a filing entity or a foreign filing entity may resign as the registered agent by giving notice to that entity and to the appropriate filing officer.

(b) Notice to the entity must be given to the entity at the address of the entity most recently known by the agent.

(c) Notice to the filing officer must be given before the 11th day after the date notice under Subsection (b) is mailed or delivered and must include:

(1) the address of the entity most recently known by the agent;

(2) a statement that written notice of the resignation has been given to the entity; and

(3) the date on which that written notice of resignation was given.

(d) On compliance with Subsections (b) and (c), the appointment of the registered agent terminates. The termination is effective on the 31st day after the date the secretary of state receives the notice.

(e) If the filing officer finds that a notice of resignation received by the filing officer conforms to Subsections (b) and (c), the filing officer shall:

(1) notify the entity of the registered agent's resignation; and

(2) file the resignation in accordance with Chapter 4, except that a fee is not required to file the resignation. (TBCA 2.10.D, 8.09.D; TLLCA 2.06.D; TNPCA 2.06.D, 8.08.D; TREITA 5.10(C), (D), (E); TRLPA 1.06(f), (g); TRPA 10.05(f), (g).)

Source Law

[TBCA 2.10]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in duplicate (the original and one copy of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate

upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to such resigning registered agent.

(4) Notify the corporation of the resignation of the registered agent.

No fee shall be required to be paid for the filing of a resignation under this section.

[TBCA 8.09]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in duplicate (the original and one copy of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to such

resigning registered agent.

(4) Notify the corporation of the resignation of the registered agent.

No fee shall be required to be paid for the filing of a resignation under this section.

[TLLCA 2.06]

D. Any registered agent of a limited liability company or foreign limited liability company may resign:

(1) by giving written notice to the limited liability company at its last known address; and

(2) by giving written notice, in duplicate (the original and one copy of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the limited liability company. Such notice shall include the last known address of the limited liability company and shall include the statement that written notice of resignation has been given to the limited liability company and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, the Secretary of State shall:

(1) Endorse on the original and the copy of the word "filed" and the month, day, and year of the filing thereof.

(2) File the original in the office of the Secretary of State.

(3) Return the copy to such resigning registered agent.

(4) Notify the limited liability company of the resignation of the registered agent.

No fee shall be required to be paid for the filing of a resignation under this section.

[TNPCA 2.06]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[TNPCA 8.08]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[TREITA 5.10]

(C) Any registered agent of a real estate investment trust may resign:

(1) by giving written notice to the real estate investment trust at the last known address of the real estate investment trust; and

(2) by filing written notice with the county clerk of the county where the declaration of trust was filed within 10 days after the date on which the notice described by Subdivision (1) of this Subsection was mailed or delivered to the real estate investment trust.

(D) The notice described by Subsection (C)(2) of this Section must include the last known address of the real estate investment trust, a statement that written notice of resignation has been given to the real estate investment trust, and the date of the resignation.

(E) On complying with the notice requirements of Subsections (C) and (D) of this Section, the appointment of a registered agent who wants to resign as agent terminates on the expiration of 30 days after the date on which the notice is filed with the county clerk of the county where the declaration of trust was filed.

[TRLPA 1.06]

(f) A registered agent of a limited partnership or foreign limited partnership may resign by giving written notice to the limited partnership and to the secretary of state. Notice must be given to the limited partnership at its last known address and to the last known address of the attorney or other individual at whose request the registered agent was appointed for the limited partnership. Notice, together with a duplicate copy, which need not be an executed original or a photocopy of an executed original, must be given to the secretary of state within 10 days after the date of mailing or delivery of the notice to the limited partnership and attorney or other individual. The notice to the secretary of state must include the last known address of the limited partnership, the statement that written notice of resignation has been given to the limited partnership, and the date that the notice was given.

(g) On compliance with the requirements for giving written notice under Subsection (f) of this section, the appointment of an agent terminates on the 31st day after the date of receipt of the notice by the secretary of state. If the secretary of state finds that the written notice conforms to this section, the secretary of state shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment. A fee is not required for the filing of a resignation under Subsection (f) of this section.

[TRPA 10.05]

(f) A registered agent of a foreign limited liability partnership may resign by giving written notice to the foreign limited liability partnership and to the secretary of state. Notice must be given to the foreign limited liability partnership at its last known address and to the last known address of the attorney or other individual at whose request the registered agent was appointed for the foreign limited liability

partnership. Notice, together with a duplicate copy, which need not be an executed original or a photocopy of an executed original, must be given to the secretary of state within 10 days after the date of mailing or delivery of the notice to the foreign limited liability partnership and attorney or individual. The notice to the secretary of state must include the last known address of the foreign limited liability partnership, the statement that written notice of resignation has been given to the foreign limited liability partnership, and the date that the notice was given.

(g) On compliance with the requirements for giving written notice under Subsection (f), the appointment of an agent terminates on the 31st day after the date of receipt of the notice by the secretary of state. If the secretary of state finds that the written notice conforms to this section, the secretary of state shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. A fee is not required for the filing of a resignation under Subsection (f).

Revisor's Note

No substantive change is intended. The Texas Business Corporation Act and Texas Non-Profit Corporation Act separated the provisions for the registration of a registered agent for a domestic entity from those for a foreign entity. The Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, and Texas Revised Partnership Act had combined the procedures into single provisions. The revised law follows the latter approach.

[Sections 5.205-5.250 reserved for expansion]

SUBCHAPTER F. SERVICE OF PROCESS

Revised Law

Sec. 5.251. FAILURE TO DESIGNATE REGISTERED AGENT. The secretary of state is an agent of an entity for purposes of service of process, notice, or demand on the entity if:

(1) the entity is a filing entity or a foreign filing entity and:

(A) the entity fails to appoint or does not

maintain a registered agent in this state; or

(B) the registered agent of the entity cannot with reasonable diligence be found at the registered office of the entity; or

(2) the entity is a foreign filing entity and:

(A) the entity's registration to do business under this code is revoked; or

(B) the entity transacts business in this state without being registered as required by Chapter 9. (TBCA 2.11.B (part), 8.10.B (part); TLLCA 2.08.B (part); TNPCA 2.07.B (part), 8.09.B (part); TREITA 5.20(B) (part); TRLPA 1.08(b) (part), 9.10(b) (part); TRPA 10.05(k).)

Source Law

[TBCA 2.11]

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. . . .

[TBCA 8.10]

B. Whenever a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. . . .

[TLLCA 2.08]

B. Whenever a limited liability company or foreign limited liability company shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such limited liability company or foreign limited liability company upon whom any such

process, notice, or demand may be served. . . .

[TNPCA 2.07]

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. . . .

[TNPCA 8.09]

B. Whenever a foreign corporation authorized to conduct affairs in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. . . .

[TREITA 5.20]

(B) When a real estate investment trust fails to appoint or maintain a registered agent in this state or when the registered agent of the real estate investment trust cannot with reasonable diligence be found at the registered office, the secretary of state shall be an agent of the real estate investment trust on whom any process, notice, or demand may be served. . . .

[TRLPA 1.08]

(b) If a limited partnership fails to appoint or maintain a registered agent in Texas or its registered agent cannot with reasonable diligence be found at the registered office, and if a general partner of the limited partnership cannot with reasonable diligence be found, the secretary of state is an agent of the limited partnership on whom any process, notice, or

demand may be served. . . .

[TRLPA 9.10]

(b) If a foreign limited partnership registered in Texas fails to appoint or maintain a registered agent in Texas, if its registered agent cannot with reasonable diligence be found at the registered office, if its registration is canceled, or if a foreign limited partnership transacts business in Texas without having registered under Section 9.02 of this Act, the secretary of state is an agent of the foreign limited partnership on whom any process, notice, or demand may be served. . . .

[TRPA 10.05]

(k) The secretary of state is an agent of the foreign limited liability partnership on whom any process, notice, or demand may be served if:

(1) a foreign limited liability partnership registered in Texas fails to appoint or maintain a registered agent in Texas;

(2) its registered agent cannot with reasonable diligence be found at the registered office;

(3) its registration is canceled;
or

(4) a foreign limited liability partnership transacts business in Texas without having registered under Section 10.02.

Revisor's Note

No substantive change is intended. As discussed in other Revisor's Notes, the requirements for service of process of the Texas Business Corporation Act or Texas Non-Profit Corporation Act are incorporated into the Cooperative Association Act, Texas Professional Corporation Act, and Texas Professional Association Act for cooperative associations, professional associations, and professional corporations.

Revised Law

Sec. 5.252. SERVICE ON SECRETARY OF STATE. (a) Service on

the secretary of state under Section 5.251 is effected by:

(1) delivering to the secretary duplicate copies of the process, notice, or demand; and

(2) accompanying the copies with any fee required by law, including this code or the Government Code, for:

(A) maintenance by the secretary of a record of the service; and

(B) forwarding by the secretary of the process, notice, or demand.

(b) Notice on the secretary of state under Subsection (a) is returnable in not less than 30 days. (TBCA 2.11.B (part), 8.10.B (part); TLLCA 2.08.B (part); TNPCA 2.07.B (part), 8.09.B (part); TREITA 5.20(B) (part), (D); TRLPA 1.08(b) (part), 9.10(b) (part); TRPA 10.05(1) (part).)

Source Law

[TBCA 2.11]

B. . . . Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. . . . Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

[TBCA 8.10]

B. . . . Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. . . . Any service so had on the Secretary of State shall be returnable in not less than thirty days.

[TLLCA 2.08]

B. . . . Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with the Secretary of State, or with the Assistant Secretary of State, or with any clerk having charge of the limited liability company department of the Secretary of State's

office, duplicate copies of such process, notice, or demand. . . . Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

[TNPCA 2.07]

B. . . . Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. . . . Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

[TNPCA 8.09]

B. . . . Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. . . . Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

[TREITA 5.20]

(B) . . . Service of any process, notice, or demand on the secretary of state shall be made by delivering to and leaving with the secretary of state, the assistant secretary of state, or any clerk having charge of the corporation department of the office of the secretary of state, duplicate copies of the process, notice, or demand. . . . Any service made on the secretary of state shall be returnable in not less than 30 days.

(D) The secretary of state shall collect for state use the fee for maintaining a record of service of any process, notice, or demand on the secretary of state as agent for any real estate investment trust under this Section that is established by Section 405.031(a), Government Code.

[TRLPA 1.08]

(b) . . . Service on the secretary of state of any process, notice, or demand may be made by delivering to the secretary of state, assistant secretary of state, or any clerk having charge of the corporation department of the secretary of state's office duplicate copies of the process, notice, or demand. . . . Service on the secretary of state is returnable in not less than 30 days.

[TRLPA 9.10]

(b) . . . Service on the secretary of state of any process, notice, or demand shall be made by delivering to the secretary of state, assistant secretary of state, or any clerk having charge of the corporation department of the secretary of state's office duplicate copies of the process, notice, or demand. . . . Service had in this manner on the secretary of state is returnable in not less than 30 days.

[TRPA 10.05]

(1) Service on the secretary of state of any process, notice, or demand shall be made by delivering duplicate copies of the process, notice, or demand to the secretary of state, assistant secretary of state, or any clerk having charge of the corporation department of the secretary of state's office. . . . Service had in this manner on the secretary of state is returnable in not less than 30 days.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 5.253. ACTION BY SECRETARY OF STATE. (a) After service in compliance with Section 5.252, the secretary of state shall immediately send one of the copies of the process, notice, or demand to the named entity.

(b) The notice must be:

(1) addressed to the most recent address of the entity on file with the secretary of state; and

(2) sent by certified mail, with return receipt requested. (TBCA 2.11.B (part), 8.10.B (part); TLLCA 2.08.B (part); TNPCA 2.07.B (part), 8.09.B (part); TREITA 5.20(B)

(part); TRLPA 1.08(b) (part), 9.10(b) (part); TRPA 10.05(1) (part).)

Source Law

[TBCA 2.11]

B. . . . In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. . . .

[TBCA 8.10]

B. . . . In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. . . .

[TLLCA 2.08]

B. . . . In the event any such process, notice, or demand is served on the Secretary of State, the Secretary of State shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the limited liability company or foreign limited liability company at its registered office. . . .

[TNPCA 2.07]

B. . . . In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. . . .

[TNPCA 8.09]

B. . . . In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to

the corporation at its principal office in the state or country under the laws of which it is incorporated. . . .

[TREITA 5.20]

(B) . . . If any process, notice, or demand is served on the secretary of state under this Section, the secretary of state shall immediately forward by registered mail one of the copies of the process, notice, or demand to the real estate investment trust at its registered office. . . .

[TRLPA 1.08]

(b) . . . If the process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail, addressed to the address of a general partner as it appears on file with the secretary of state or, if no address appears on file, at the partnership's last registered office. . . .

[TRLPA 9.10]

(b) . . . If any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail addressed to the foreign limited partnership at its principal office in the state under which the foreign limited partnership is formed as shown on the registration application. . . .

[TRPA 10.05]

(1) . . . If any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail addressed to the foreign limited liability partnership at its principal office in the state under which the foreign limited liability partnership is formed as shown on the statement of foreign qualification. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 5.254. REQUIRED RECORDS OF SECRETARY OF STATE. The secretary of state shall keep a record of each process, notice, or demand served on the secretary under this subchapter and shall record:

(1) the time when each service on the secretary was made; and

(2) each subsequent action of the secretary taken in relation to that service. (TBCA 2.11.C, 8.10.C; TLLCA 2.08.C; TNPCA 2.07.C, 8.09.C; TREITA 5.20(C); TRLPA 1.08(c), 9.10(c); TRPA 10.05(m).)

Source Law

[TBCA 2.11]

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[TBCA 8.10]

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[TLLCA 2.08]

C. The Secretary of State shall keep a record of all processes, notices and demands served under this Article, and shall record therein the time of such service and the action with reference thereto.

[TNPCA 2.07]

C. The Secretary of State shall keep a record of all processes, notices, and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[TNPCA 8.09]

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[TREITA 5.20]

(C) The secretary of state shall keep a record of all processes, notices, and demands served on the secretary of state under this Section. The record must include the time of the service and the action of the secretary of state with regard to the process, notice, or demand.

[TRLPA 1.08]

(c) The secretary of state shall keep a record of any process, notice, or demand served on the secretary of state under this section and shall record the time of service and the action taken with reference to each.

[TRLPA 9.10]

(c) The secretary of state shall keep a record of all processes, notices, and demands served on the secretary of state under this section and shall record the time of the service and the action taken with reference to each.

[TRPA 10.05]

(m) The secretary of state shall keep a record of all processes, notices, and demands served on the secretary of state under this section and shall record the time of the service and the action taken with reference to each.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 5.255. AGENT FOR SERVICE OF PROCESS, NOTICE, OR DEMAND AS MATTER OF LAW. For the purpose of service of process, notice, or demand:

(1) the president and each vice president of a domestic or foreign corporation is an agent of that corporation;

(2) each general partner of a domestic or foreign limited partnership and each partner of a domestic or foreign general partnership is an agent of that partnership;

(3) each manager of a manager-managed domestic or foreign limited liability company and each member of a member-managed domestic or foreign limited liability company is an agent of that limited liability company;

(4) each person who is a governing person of a

domestic or foreign entity, other than an entity listed in Subdivisions (1)-(3), is an agent of that entity; and

(5) each member of a committee of a nonprofit corporation authorized to perform the chief executive function of the corporation is an agent of that corporation. (TBCA 2.11.A (part), 8.10.A (part); TLLCA 2.08.A (part); TNPCA 2.07.A (part), 8.09.A (part); TREITA 5.20(A) (part); TRLPA 1.08(a) (part), 9.10(a) (part); TRPA 10.05(j) (part).)

Source Law

[TBCA 2.11]

A. The president and all vice presidents of the corporation and . . . shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

[TBCA 8.10]

A. The president and all vice presidents of a foreign corporation authorized to transact business in this State and . . . shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

[TLLCA 2.08]

A. The managers, if any, and . . . shall be agents of a limited liability company or foreign limited liability company upon whom any process, notice, or demand required or permitted by law to be served upon the limited liability company or foreign limited liability company may be served.

[TNPCA 2.07]

A. The president and all vice-presidents of the corporation and . . . shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function of a corporation is authorized to be performed by a committee, service on any member of such committee shall be deemed to be service on the president.

[TNPCA 8.09]

A. The president and all vice-presidents of a foreign corporation authorized to conduct affairs in this State and . . . shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function is performed by a committee, service may be had on any member thereof.

[TREITA 5.20]

(A) The president, all vice presidents, and . . . of the real estate investment trust are agents of the real estate investment trust on whom any process, notice, or demand required or permitted by law to be served on the real estate investment trust may be served.

[TRLPA 1.08]

(a) Each general partner and . . . of a limited partnership are agents of the limited partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the limited partnership.

[TRLPA 9.10]

(a) Each general partner and . . . of a foreign limited partnership registered in Texas are agents of the foreign limited partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited partnership.

[TRPA 10.05]

(j) Each partner and . . . of a foreign limited liability partnership registered in Texas are agents of the foreign limited liability partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 5.256. OTHER MEANS OF SERVICE NOT PRECLUDED. This chapter does not preclude other means of service of process, notice, or demand on a domestic or foreign entity as provided by other law. (TBCA 8.10.D; TLLCA 2.08.D; TRLPA 9.10(d); TRPA 10.05(n).)

Source Law

[TBCA 8.10]

D. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[TLLCA 2.08]

D. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any manner now or hereafter permitted by law.

[TRLPA 9.10]

(d) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on a foreign limited partnership in another manner permitted by law.

[TRPA 10.05]

(n) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on a foreign limited liability partnership in another manner permitted by law.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 5.257. SERVICE OF PROCESS BY POLITICAL SUBDIVISION.
(a) A process, notice, or demand required or permitted by law to

be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a domestic or foreign corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, that is involuntarily terminated under Chapter 11, or whose registration is revoked under Chapter 9 by delivery of the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state.

(b) If the officers or directors of a corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service is made on unknown shareholders under law.

(c) Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title. (TBCA 2.11.D, 8.10.E; TNPCA 2.07.D.)

Source Law

[TBCA 2.11]

D. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service is made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

[TBCA 8.10]

E. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a foreign corporation whose privileges to transact business in this state are forfeited under Section 171.251, Tax Code, or whose certificate of authority is revoked under Article 8.16 of this Act by delivering the process, notice, or demand to any officer or director of the foreign corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the foreign corporation are unknown or cannot be found, service on the foreign corporation may be made in the same manner as service is made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a foreign corporation, service of process under this section is sufficient for a judgment against the foreign corporation or a judgment in rem against any property to which the foreign corporation holds title.

[TNPCA 2.07]

D. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on

the corporation may be made in the same manner as service is made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

Revisor's Note

Except for the expansion of the revised law to apply to foreign nonprofit corporations, no substantive change is intended.

CHAPTER 6. MEETINGS AND VOTING

SUBCHAPTER A. MEETINGS

Revised Law

Sec. 6.001. LOCATION OF MEETINGS. (a) Meetings of the owners or members of a domestic entity may be held at locations in or outside the state as:

- (1) provided by or fixed in accordance with the governing documents of the domestic entity; or
- (2) agreed to by all persons entitled to notice of the meeting.

(b) If the location of meetings of the owners or members of the entity is not established under Subsection (a), the owners or members may hold meetings only at the registered office of the entity in this state or the principal office of the entity.

(c) The governing persons of a domestic entity, or a committee of the governing persons, may hold meetings in or outside the state as:

- (1) provided by or fixed in accordance with:
 - (A) the governing documents of the domestic entity; or
 - (B) the person calling the meeting; or
- (2) agreed to by all persons entitled to notice of the meeting. (CAA 13(b), 21(d); TBCA 2.24.A, 2.37.A; TLLCA 2.19.A, B; TNPCA 2.10.A (part), 2.19.A; TREITA 10.10(A), 10.20(A).)

Source Law

[CAA 13]

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

[CAA 21]

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

[TBCA 2.24]

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings shall be held at the registered office of the corporation.

[TBCA 2.37]

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

[TLLCA 2.19]

A. Except as otherwise provided in the articles of organization or the regulations, regular or special meetings of the members, managers, or any committee may be held either within or without this State.

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.

[TNPCA 2.10]

A. If a corporation has members:

(1) Meetings of members shall be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

. . .

[TNPCA 2.19]

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

[TREITA 10.10]

(A) Meetings of shareholders shall be

held at such place, either within or without the state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the real estate investment trust.

[TREITA 10.20]

(A) Meetings of the trust manager(s), whether regular or special, may be held either within or without this State.

Revisor's Note

By virtue of Section 6.301, none of Chapter 6 applies to a partnership, unless its governing documents so provide. Because of Section 252.017, none of Chapter 6 applies to unincorporated nonprofit associations.

Sections 6.001 to 6.053 set forth provisions relating to the location of and other matters relating to the calling and holding of meetings. These sections are derived in large part from the Texas Business Corporation Act, Texas Non-Profit Corporation Act, Texas Real Estate Investment Trust Act, and Texas Limited Liability Company Act. As a consequence of their derivation from the Texas Limited Liability Company Act, Texas Business Corporation Act, and Texas Non-Profit Corporation Act, the requirements of the revised law are incorporated in existing statutes for entities such as professional associations, cooperative associations, and professional corporations.

The source law for Section 6.001 generally permitted the locations of meetings to be set by an entity's governing documents or meetings to be held at the entity's registered or principal office if the governing documents were silent. The revised law, however, varies from the source law by also allowing all the persons entitled to notice of the meeting to set the location of the meeting.

Revised Law

Sec. 6.002. ALTERNATIVE FORMS OF MEETINGS. (a) Subject to this code and the governing documents of a domestic entity, the owners, members, or governing persons of the entity, or a committee of the owners, members, or governing persons, may hold

meetings by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting.

(b) If voting is to take place at the meeting, the entity must:

(1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and

(2) keep a record of any vote or other action taken.
(TBCA 9.10.C (part); TLLCA 2.23.C (part); TNPCA 9.11.A; TREITA 10.30(C) (part).)

Source Law

[TBCA 9.10]

C. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or by-laws, shareholders, members of the board of directors, or members of any committee designated by such board, may participate in and hold a meeting of such shareholders, board, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and

[TLLCA 2.23]

C. Subject to the provisions required or permitted by this Act, unless otherwise provided in the articles of organization or the regulations, members, managers, or members of any committee may participate in and hold a meeting of the members, managers, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other. . . .

[TNPCA 9.11]

A. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the

articles of incorporation or bylaws, members of a corporation, members of the board of directors of a corporation, or members of any committee designated by such board may participate in and hold a meeting of such members, board, or committee by means of:

(1) conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other; or

(2) another suitable electronic communications system, including videoconferencing technology or the Internet, only if:

(a) each member entitled to participate in the meeting consents to the meeting being held by means of that system; and

(b) the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant.

[TREITA 10.30]

(C) Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the declaration of trust or bylaws, shareholders, trust manager(s), or members of any committee designated by such trust manager(s), may participate in and hold a meeting of such shareholders, trust manager(s) or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and

Revisor's Note

Section 6.002 is derived from provisions in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, Texas Limited Liability Company Act, and Texas Real Estate Investment Trust Act that permit meetings to be held by conference telephone or other communications equipment so long as each participant can communicate with all other participants. The revised law is intended to

permit flexibility in the manner of holding meetings consistent with developments in technology, but adds certain safeguards concerning identification and recordkeeping. Section 6.002 recognizes the continuing advancements in electronic communications technology and explicitly authorizes use of other suitable electronic communications systems, including videoconferencing or the Internet. This approach is consistent with recent amendments made to the Delaware corporation law permitting the use of new technologies to conduct shareholder meetings entirely by remote communication. Subsection (b) requires that a verification system be established to identify that the appropriate persons are voting at the meeting and to permit recordkeeping.

Revised Law

Sec. 6.003. PARTICIPATION CONSTITUTES PRESENCE. A person participating in a meeting is considered present at the meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened. (TBCA 9.10.C (part); TLLCA 2.23.C (part); TREITA 10.30(C) (part).)

Source Law

[TBCA 9.10]

C. . . . participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

[TLLCA 2.23]

C. . . . Participation in a meeting pursuant to this Section constitutes presence in person at the meeting except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

[TREITA 10.30]

(C) . . . participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Revisor's Note

No substantive change is intended.

[Sections 6.004-6.050 reserved for expansion]

SUBCHAPTER B. NOTICE OF MEETINGS

Revised Law

Sec. 6.051. GENERAL NOTICE REQUIREMENTS. (a) Subject to this code and the governing documents of the entity, notice of a meeting of the owners, members, or governing persons of a domestic entity, or a committee of the owners, members, or governing persons, must:

(1) be given in the manner determined by the governing authority of the entity; and

(2) state:

(A) the date and time of the meeting; and

(B) the location of the meeting or, if the meeting is held by using a conference telephone or other communications system authorized by Section 6.002, the form of communication used for the meeting.

(b) Subject to this code and the governing documents of a domestic entity, notice of a meeting that is:

(1) mailed is considered to be delivered on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity; and

(2) transmitted by facsimile or electronic message is considered to be delivered when the facsimile or electronic message is successfully transmitted. (CAA 14 (part); TBCA 2.25.A (part), 2.37.B (part); TLLCA 2.19.B, E; TNPCA 2.11.A (part), 2.19.B (part).)

Source Law

[CAA]

14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. . . .

[TBCA 2.25]

A. Written or printed notice stating

the place, day and hour of the meeting and . . . shall be delivered . . . either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the share transfer records of the corporation, with postage thereon prepaid.

[TBCA 2.37]

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. . . .

[TLLCA 2.19]

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.

E. If mailed, such notice to a member shall be deemed to be delivered when deposited in the United States mail addressed to the member at the member's address that appears on the records of the limited liability company, with postage prepaid.

[TNPCA 2.11]

A. In the case of a corporation other than a church, written or printed notice stating the place, day, and hour of the meeting and . . . either personally, by facsimile transmission, or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage

thereon paid. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile.

[TNPCA 2.19]

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. . . .

Revisor's Note

Section 6.051 permits each entity to choose the method of notice that it utilizes, sets out the type of information that must be included in the notice, and establishes when notice is deemed to be delivered. The revised law expands on the source law to enable notice to be sent by electronic message or facsimile, which is partially provided in the Texas Non-Profit Corporation Act. In addition, the source law provisions enabled regular meetings of governing persons to be held with or without notice as provided for in the governing documents. The revised law does not change this rule but only requires, as a default rule, notice for both regular and special meetings. The governing documents of the entity may specify that notice of a regular meeting is not required.

Revised Law

Sec. 6.052. WAIVER OF NOTICE. (a) Notice of a meeting is not required to be given to an owner, member, or governing person of a domestic entity, or a member of a committee of the owners, members, or governing persons, entitled to notice under this code or the governing documents of the entity if the person entitled to notice signs a written waiver of notice of the meeting, regardless of whether the waiver is signed before or after the time of the meeting.

(b) If a person entitled to notice of a meeting participates in the meeting, the person's participation constitutes a waiver of notice of the meeting unless the person participates in the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not lawfully called or convened. (TBCA 2.37.B (part), 9.09; TLLCA 2.19.F, 8.08; TNPCA 2.19.B (part), 9.09; TREITA 21.10.)

Source Law

[TBCA 2.37]

B. . . . Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. . . .

[TBCA]

9.09.A. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[TLLCA 2.19]

F. Attendance of a member, manager, or committee member at a meeting shall constitute a waiver of notice of such meeting, except where that member, manager, or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

[TLLCA]

8.08.A. Whenever any notice is required to be given to any managers or members of a limited liability company under the provisions of this Act or under the provisions of the articles of organization or regulations of the limited liability company, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[TNPCA 2.19]

B. . . . Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. . . .

[TNPCA]

9.09.A. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[TREITA]

21.10. Whenever any notice is required to be given to any shareholder of a real estate investment trust under the provisions of this Act or under the provisions of the declaration of trust or bylaws of the real estate investment trust, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Revisor's Note

Section 6.052 permits any person entitled to notice of a meeting to waive notice in writing or by participating in the meeting. The source law provisions in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Real Estate Investment Trust Act do not explicitly state that participation by shareholders or members in the meeting would constitute waiver of notice of that meeting.

Revised Law

Sec. 6.053. EXCEPTION. (a) Notice of a meeting is not required to be given to an owner or member of a filing entity entitled to notice under this code or the governing documents of the entity if either of the following is mailed to the person

entitled to notice of the meeting to the person's address as it appears on the ownership or membership transfer records of the entity and is returned undeliverable:

(1) notice of two consecutive annual meetings and notice of any meeting held during the period between the two annual meetings; or

(2) all, but in no event less than two, payments of distribution or interest on securities during a 12-month period if the payments are sent by first class mail.

(b) Notice of a meeting is not required to be given to an owner or member entitled to notice under this code or the governing documents of a filing entity the notice requirements of which are subject to the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78a et seq.), if the person entitled to notice of the meeting is considered a lost security holder under that Act and the regulations adopted under that Act.

(c) An action taken or a meeting held without giving notice to a person not entitled to notice under this section has the same force and effect as if notice had been given to the person.

(d) A certificate or other document filed with the secretary of state as a result of a meeting held or an action taken by a filing entity without giving notice of the meeting or action to a person not entitled to notice under this section may state that notice of the meeting or action was given to each person entitled to notice.

(e) Notice of a meeting must be given to a person not entitled to notice of the meeting under this section if the person delivers to the entity a written notice of the person's address. (TBCA 2.25.B; TREITA 11.10(B), (C).)

Source Law

[TBCA 2.25]

B. Any notice required to be given to any shareholder, under any provision of this Act or the articles of incorporation or bylaws of any corporation, need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without

notice to such a person shall have the same force and effect as if the notice had been duly given and, if the action taken by the corporation is reflected in any articles or document filed with the Secretary of State, those articles or that document may state that notice was duly given to all persons to whom notice was required to be given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

[TREITA 11.10]

(B) Any notice otherwise required to be given to any shareholder under this Act or the declaration of trust or bylaws of any real estate investment trust is not required for the shareholder if:

(1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, have been mailed to the shareholder at the address shown on the share transfer records of the real estate investment trust and the notice has been returned undeliverable; or

(2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to the shareholder at the address shown on the share transfer records of the real estate investment trust, and the payments have been returned undeliverable.

(C) Any action or meeting taken or held without notice to a shareholder described by Subsection (B) of this Section has the same force and effect as if the notice had been duly given to the shareholder. If the action taken by the real estate investment trust is reflected in any document filed with the secretary of state, that document may state that notice was duly given to all persons to whom notice was required to be given. If a shareholder described by Subsection (B) of this Section delivers to the real estate investment trust a written notice setting

forth the shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated.

Revisor's Note

Section 6.053 is derived from provisions found in the Texas Business Corporation Act and Texas Real Estate Investment Trust Act that enable an entity to have valid meetings without giving notice to an owner or member when certain previous notices or distributions mailed to that person's address have been returned undeliverable. The revised law in Section 6.053(b), however, incorporates by reference Securities and Exchange Commission rules that permit a publicly traded entity not to provide notice to a "lost security holder." This provision has been expanded to cover limited liability companies, cooperative associations, and nonprofit corporations.

[Sections 6.054-6.100 reserved for expansion]

SUBCHAPTER C. RECORD DATES

Revised Law

Sec. 6.101. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. (a) Subject to this code, the governing documents of a domestic entity may provide the record date, or the manner of determining the record date, for:

(1) determining the owners or members of the entity entitled to:

(A) receive notice of a meeting of the owners or members;

(B) vote at a meeting of the owners or members or at any adjournment of a meeting; or

(C) receive a distribution from the entity other than a distribution involving a purchase or redemption by the entity of the entity's own securities; or

(2) any other proper purpose other than for determining the owners or members entitled to consent to action without a meeting of the owners or members.

(b) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity, in advance, may provide a record date for determining the owners or members of the entity, except that the date may not be earlier than the 60th day before the date the action requiring the determination of owners or members is taken.

(c) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity may

provide for the closing of the ownership or membership transfer records of the entity for a period of not longer than 60 days to determine the owners or members of the entity for a purpose described by Subsection (a).

(d) If the owners or members of an entity are not otherwise determined under this section, the record date for determining the owners or members of an entity is the date on which:

(1) notice of the meeting is mailed to the owners or members entitled to notice of the meeting; or

(2) with respect to a distribution, other than a distribution involving a purchase or redemption by the domestic entity of any of its own securities, the governing authority adopts the resolution declaring the distribution.

(e) The record date for a meeting applies to any adjournment of the meeting unless:

(1) the owners or members entitled to vote are determined under Subsection (c); and

(2) the period during which the transfer records are closed expires. (TBCA 2.26.B (part); TNPCA 2.11A; TREITA 11.20(C) (part).)

Source Law

[TBCA 2.26]

B. Fixing Record Dates for Matters Other Than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by a corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of shareholders), the board of directors of a corporation may provide that the share transfer records shall be closed for a stated period but not to exceed, in any case, sixty (60) days. . . . In lieu of closing the share transfer records, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60)

days and . . . prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such distribution or share dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

[TNPCA]

2.11A. A. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the by-laws do not fix and do not provide for fixing the record date, the board of directors may fix a future date as the record date. If a record date is not fixed, members at the close of business on the business day preceding the date on which notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of the meeting.

B. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the by-laws do not fix and do not provide for fixing a record date, the board may fix a

future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The by-laws may fix or provide the manner for fixing a date as the record date for the purpose of determining the members entitled to exercise any rights regarding any other lawful action. If the by-laws do not fix and do not provide for fixing a record date, the board of directors may fix in advance a record date. If a record date is not fixed, members at the close of business on the date on which the board of directors adopts the resolution relating to the record date, or the 60th day before the date of the other action, whichever is later, are entitled to exercise those rights.

D. A record date fixed under this section may not be more than sixty (60) days before the date of the meeting or action that requires the determination of the members.

E. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote. The board must fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than ninety (90) days after the record date for determining members entitled to notice of the original meeting.

[TREITA 11.20]

(C) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment of a meeting of shareholders, or shareholders entitled to receive a distribution by a real estate investment trust (other than a distribution involving a purchase or redemption by the real estate investment trust of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by

shareholders proposed to be taken without a meeting of shareholders), the trust managers of a real estate investment trust may provide that the share transfer records shall be closed for a stated period not to exceed 60 days. . . . In lieu of closing the share transfer records, the bylaws, or in the absence of an applicable bylaw, the trust managers, may fix in advance a date as the record date for the determination of shareholders. The record date for any such determination of shareholders may not be more than 60 days and . . . before the date on which the particular action requiring the determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution (other than a distribution involving a purchase or redemption by the real estate investment trust of any of its own shares) or a share dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the trust managers declaring such distribution or share dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made in the manner provided in this Section, the determination of shareholders shall apply to any adjournment of the meeting of shareholders except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

Revisor's Note

Additional record date provisions in the Code for for-profit corporations can be found in Sections 21.356 and 21.357.

The revised law omits the 90-day time limit on adjournments under the Texas Non-Profit Corporation Act to conform with

the more modern provisions of the Texas Business Corporation Act and Texas Real Estate Investment Trust Act, which do not contain a similar time limit.

Subchapter C does not cover limited liability companies by virtue of Section 6.302, but a limited liability company can adopt similar rules in its company agreement.

Revised Law

Sec. 6.102. RECORD DATE FOR WRITTEN CONSENT TO ACTION. (a) Subject to this code and the governing documents of an entity, the governing authority of the entity may provide the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members unless a record date is provided under Section 6.101 for that action. The record date may not be earlier than the date the governing authority adopts the resolution providing for the record date.

(b) Subject to this code and the governing documents of an entity, the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members is the date a signed written consent to action stating the action taken or proposed to be taken is first delivered to the entity if:

(1) the governing authority of the entity does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is not required under this code.

(c) Subject to this code or the governing documents of an entity, the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members is at the close of business on the date the governing authority of the entity adopts a resolution taking prior action if:

(1) the governing authority does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is required by this code. (TBCA 2.26.C (part); TREITA 11.20(D) (part).)

Source Law

[TBCA 2.26]

C. Fixing Record Dates for Consents to Action. Unless a record date shall have previously been fixed or determined pursuant to this section, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of

shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and . . . the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation as provided in Section A of Article 9.10 of this Act. . . . If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

[TREITA 11.20]

(D) Unless a record date has previously been fixed or determined under this Section, when action by shareholders is proposed to be taken by written consent without a meeting of shareholders, the trust managers may fix a record date for the purpose of determining shareholders entitled to consent to that action. The record date may not precede and . . . after the date on which the trust managers adopt the resolution fixing the record date. If no record date has been fixed by the trust managers and the prior action of the trust managers is not required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered . . . to the real estate investment trust as provided by Subsection (A) of Section 10.30 of this

Act. . . . If no record date shall have been fixed by the trust managers and prior action of the trust managers is required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the trust managers adopt a resolution taking such prior action.

Revisor's Note

No substantive change is intended, except that the revised law is expanded to apply to nonprofit corporations.

Revised Law

Sec. 6.103. RECORD DATE FOR SUSPENDED DISTRIBUTIONS. (a) In this section, "distribution" includes a distribution that:

(1) was payable to an owner or member but not paid and was held in suspension by the entity making the distribution; or

(2) is paid or delivered by the entity making the distribution into an escrow account or to a trustee or custodian.

(b) A distribution made by a domestic entity shall be payable by the entity, or an escrow agent, trustee, or custodian of the distribution, to the owner or member determined on the record date for the distribution as provided by this subchapter.

(c) The right to a distribution under this section may be transferred by contract, by operation of law, or under the laws of descent and distribution. (TBCA 2.26.D; TREITA 11.20(E).)

Source Law

[TBCA 2.26]

D. Distributions Held in Suspense.
Distributions made by a corporation, including those that were payable but not paid to a holder of shares, or to his heirs, successors, or assigns, and have been held in suspense by the corporation or were paid or delivered by it into an escrow account or to a trustee or custodian, shall be payable by the corporation, escrow agent, trustee, or custodian to the holder of the shares as of the record date determined for that distribution as provided in Section B of this Article, or to his heirs, successors, or assigns.

[TREITA 11.20]

(E) Distributions made by a real estate

investment trust, including those distributions that were payable but not paid to a holder of shares or to the holder's heirs, successors, or assigns and have been held in suspense by the real estate investment trust or were paid or delivered by the real estate investment trust into an escrow account or to a trustee or custodian, shall be payable by the real estate investment trust, escrow agent, trustee, or custodian of the distributions to the holder of the shares as of the record date determined for that distribution as provided in Subsection (C) of this Section, or to the holder's heirs, successors, or assigns.

Revisor's Note

No substantive change is intended. Although the revised law applies to nonprofit corporations, nonprofit corporations generally do not make any distributions.
[Sections 6.104-6.150 reserved for expansion]
SUBCHAPTER D. VOTING OF OWNERSHIP INTERESTS

Revised Law

Sec. 6.151. MANNER OF VOTING OF INTERESTS. Subject to the title governing the domestic entity, voting of interests of a domestic entity must be conducted in the manner provided by the governing documents of the entity. (New.)

Revisor's Note

Subchapter D is not applicable to partnerships or limited liability companies because of Subchapter G.

No substantive change is intended because the substance of the revised law is implicit in the various source laws for the code. The revised law provides that the governing documents of the domestic entity, subject to the specific title of the revised law that governs the entity, may specify the manner in which voting of interests in the entity must be conducted.

Revised Law

Sec. 6.152. VOTING OF INTERESTS OWNED BY ENTITY. (a) Except as provided by Subsection (b), an ownership interest owned by the entity that is the issuer of the interest, or by its direct or indirect subsidiary, may not be:

- (1) directly or indirectly voted at a meeting; or
- (2) included in determining at any time the total

number of outstanding ownership interests of the entity.

(b) This section does not preclude a domestic or foreign entity from voting an ownership interest, including an interest in the entity, held or controlled by the entity in a fiduciary capacity or for which the entity otherwise exercises voting power in a fiduciary capacity. (TBCA 2.29.B; TREITA 13.10(B).)

Source Law

[TBCA 2.29]

B. Shares of its own stock owned by a corporation or by another domestic or foreign corporation or other entity, if a majority of the voting stock or voting interest of the other corporation or other entity is owned or controlled by the corporation, shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time. Nothing in this section shall be construed as limiting the right of any domestic or foreign corporation or other entity to vote stock, including but not limited to its own stock, held or controlled by it in a fiduciary capacity, or with respect to which it otherwise exercises voting power in a fiduciary capacity.

[TREITA 13.10]

(B) Shares of the stock of a real estate investment trust that are owned by another real estate investment trust or corporation, if a majority of the voting stock of the other real estate investment trust or corporation is owned or controlled by the real estate investment trust, may not be voted, directly or indirectly, at any meeting and may not be counted in determining the total number of outstanding shares at any given time. Nothing in this Subsection shall be construed as limiting the right of any real estate investment trust to vote stock, including voting its own stock, held or controlled by the real estate investment trust in a fiduciary capacity or with respect to which the real estate investment trust otherwise exercises voting power in a fiduciary capacity.

Revisor's Note

No substantive change is intended.

Portions of the source law provisions are replaced by the term "subsidiary," which is defined in Chapter 1. Sections 6.152-6.156 do not apply to nonprofit corporations because those sections do not apply to "membership interests."

Revised Law

Sec. 6.153. VOTING OF INTERESTS OWNED BY ANOTHER ENTITY. An ownership interest in an entity owned by another entity, whether a domestic or foreign entity, may be voted by the officer, agent, or proxy as authorized by:

(1) the governing documents of the entity that owns the interest; or

(2) the governing authority of the entity that owns the interest, if the governing documents do not provide for the manner of voting. (TBCA 2.29.E (part); TREITA 13.10(F) (part).)

Source Law

[TBCA 2.29]

E. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine; provided, however

[TREITA 13.10]

(F) Shares standing in the name of another real estate investment trust or corporation, domestic or foreign, may be voted by an officer, agent, or proxy that is authorized to vote those shares by the bylaws of the real estate investment trust or corporation or, in the absence of such authorization, by an officer, agent, or proxy as determined by the trust managers or board of directors of the real estate investment trust or corporation. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 6.154. VOTING OF INTERESTS IN AN ESTATE OR TRUST. (a) An administrator, executor, guardian, or conservator of an estate who holds an ownership interest as part of the estate may vote

the interest without transferring the interest into the person's name.

(b) An ownership interest in the name of a trust may be voted in person or by proxy by:

(1) the trustee; or

(2) a person authorized to act on behalf of the trust by the trust agreement or the trustee. (TBCA 2.29.F; TREITA 13.10(G).)

Source Law

[TBCA 2.29]

F. Shares held by an administrator, executor, guardian, or conservator may be voted by him so long as such shares forming a part of an estate are in the possession and forming a part of the estate being served by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name as trustee.

[TREITA 13.10]

(G) Shares held by a person who is an administrator, executor, guardian, or conservator may be voted by the person so long as the shares forming a part of an estate are in the possession and forming a part of the estate being served by the person, either personally or by proxy, without a transfer of such shares into the person's name. Shares standing in the name of a trustee may be voted by the trustee, either personally or by proxy, but a trustee is not entitled to vote shares held by the trustee without a transfer of those shares into the trustee's name as trustee.

Revisor's Note

Subsection (b) of the revised law permits trustees to vote ownership interests held by a trust even though not held in the trustee's name, which the source law requires. This change permits more flexibility for identifying trusts and trustees on certificates and ownership

records and puts trustees on a par with receivers, administrators, executors, guardians, and conservators.

Revised Law

Sec. 6.155. VOTING OF INTERESTS BY RECEIVER. (a) A receiver may vote an ownership interest standing in the name of the receiver.

(b) A receiver may vote an ownership interest held by or under the control of the receiver without transferring the interest into the receiver's name if the court appointing the receiver authorizes the receiver to vote the interest. (TBCA 2.29.G; TREITA 13.10(H).)

Source Law

[TBCA 2.29]

G. Shares standing in the name of a receiver may be voted by such a receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

[TREITA 13.10]

(H) Shares standing in the name of, held by, or under the control of a receiver may be voted by the receiver, without transferring the shares into the receiver's name, if authority to vote the shares is contained in an appropriate court order by which the receiver was appointed to serve as receiver.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 6.156. VOTING OF PLEDGED INTERESTS. A pledged ownership interest may be voted by:

(1) the owner of the pledged interest until the interest is transferred into the pledgee's name; and

(2) the pledgee after the pledged interest is transferred into the pledgee's name. (TBCA 2.29.H; TREITA 13.10(I).)

Source Law

[TBCA 2.29]

H. A shareholder whose shares are

pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

[TREITA 13.10]

(I) A shareholder whose shares are pledged is entitled to vote those shares until the shares have been transferred into the pledgee's name. After the shares have been transferred into the pledgee's name, the pledgee shall be entitled to vote the transferred shares.

Revisor's Note

No substantive change is intended.

[Sections 6.157-6.200 reserved for expansion]

SUBCHAPTER E. ACTION BY WRITTEN CONSENT

Revised Law

Sec. 6.201. UNANIMOUS WRITTEN CONSENT TO ACTION. (a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity or at a regular, special, or other meeting of the governing authority of the entity or a committee of the governing authority.

(b) The owners or members or the governing authority of a filing entity, or a committee of the governing authority, may take action without holding a meeting, providing notice, or taking a vote if each person entitled to vote on the action signs a written consent or consents stating the action taken.

(c) A written consent described by Subsection (b) has the same effect as a unanimous vote at a meeting.

(d) A filing instrument filed with the filing officer may state that an action approved by written consent or consents has the effect of an approval by a unanimous vote at a meeting.

(TBCA 9.10.A(1) (part), B; TLLCA 2.23.B(1); TNPCA 9.10.A, B; TREITA 10.30(A), (B).)

Source Law

[TBCA 9.10]

A. (1) Any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, 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, shall have been signed by the holder or holders of all the shares entitled to vote with respect to the action that is the subject of the consent. . . .

B. Unless otherwise restricted by the articles of incorporation or by-laws, any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

[TLLCA 2.23.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.

[TNPCA 9.10]

A. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the members

entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee, as the case may be.

B. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

[TREITA 10.30]

(A) Unless otherwise provided by the declaration of trust or bylaws, any action required or permitted to be taken at a meeting of the shareholders of a real estate investment trust may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such action shall then have the same force and effect as action taken at a meeting, and may be stated as such in any declaration of trust or document filed with the county clerk of the county of the principal place of business of the real estate investment trust.

(B) Unless otherwise provided by the declaration of trust or bylaws, any action required or permitted to be taken at a meeting of the trust manager(s) or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the trust managers or members of such committee, as the case may be. Such action shall then have the same force and effect as action taken at a meeting, and may be stated as such in any document or instrument filed with the county clerk of the county of the principal place of business of the trust.

Revisor's Note

No substantive change is intended. Subchapter E does not apply to partnerships because of Subchapter G. Reference is made to Section 101.358 of the revised law for additional consent provisions governing limited liability companies.

Revised Law

Sec. 6.202. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT.

(a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity.

(b) Except as provided by this code, the certificate of formation of a filing entity may authorize the owners or members of the entity to take action without holding a meeting, providing notice, or taking a vote if owners or members of the entity having at least the minimum number of votes that would be necessary to take the action that is the subject of the consent at a meeting, in which each owner or member entitled to vote on the action is present and votes, sign a written consent or consents stating the action taken.

(c) A written consent or consents described by Subsection (b) must include the date each owner or member signed the consent and is effective to take the action that is the subject of the consent only if the consent or consents are delivered to the entity not later than the 60th day after the date the earliest dated consent is delivered to the entity as required by Section 6.203.

(d) The entity shall promptly notify each owner or member who did not sign a consent described by Subsection (b) of the action that is the subject of the consent. (TBCA 9.10.A(1) (part), (2) (part), (4); TLLCA 2.23.B(1); TNPCA 9.10.C(1), (2) (part), (3).)

Source Law

[TBCA 9.10.A]

(1) . . . The articles of incorporation may provide that any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, 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, shall be signed by the holder or holders or shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent signed by the holders of less than all the shares entitled to vote with respect to the action

that is the subject of the consent shall bear the date of signature of each shareholder who signs the consent. No written consent signed by the holders of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall be effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this Article, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

[TLLCA 2.23.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.

[TNPCA 9.10.C]

(1) The articles of incorporation may provide that any action required by this Act to be taken at a meeting of the members or directors of a corporation or any action that may be taken at a meeting of the members or directors or of any committee may be taken

without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted.

(2) Each written consent shall bear the date of signature of each member, director, or committee member who signs the consent. A written consent signed by less than all of the members, directors, or committee members is not effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this article, a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation

(3) Prompt notice of the taking of any action by members, directors, or a committee without a meeting by less than unanimous written consent shall be given to all members, directors, or committee members who did not consent in writing to the action.

Revisor's Note

No substantive change is intended. Reference is made to Section 101.358 of the revised law for additional consent provisions governing limited liability companies. Real estate investment trusts, professional corporations, professional associations, and cooperative associations incorporate these rules currently into their governing statutes from the Texas Business Corporation Act and Texas Non-Profit Corporation Act.

Revised Law

Sec. 6.203. DELIVERY OF LESS THAN UNANIMOUS WRITTEN CONSENT. (a) A written consent signed by an owner or member of a filing entity as provided by Section 6.202, if the consent is not solicited on behalf of the entity or its governing authority, must be delivered by hand or certified or registered mail, return receipt requested, or by other means specified in the governing documents, to:

(1) the entity's registered office or principal executive office or place of business; or

(2) the managerial official or agent of the entity having custody of the entity's records of meetings of owners or members.

(b) A consent delivered to an entity's principal executive office or place of business under Subsection (a)(1) must be addressed to the chief managerial official of the entity or, if the entity does not have a chief managerial official, the governing authority of the entity. (TBCA 9.10.A(2) (part); TNPCA 9.10.C(2) (part).)

Source Law

[TBCA 9.10.A]

(2) . . . a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

[TNPCA 9.10.C]

(2) . . . a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation at its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of members, directors, or committees are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the

president or principal executive officer of the corporation.

Revisor's Note

Section 6.203 is derived from Article 9.10.A(2), Texas Business Corporation Act, and Article 9.10.C(2), Texas Non-Profit Corporation Act, and specifies how a written consent of owners or members that is less than unanimous must be delivered to the filing entity or its governing authority. The strict consent delivery requirements of Section 6.203 do not apply when the entity is soliciting the consent. This is a change from the source law. Presumably, in that situation, the filing entity is aware of when a consent is signed. This section does not apply to non-filing entities, which tend to act with less formality in the governing of their affairs.

Revised Law

Sec. 6.204. ADVANCE NOTICE NOT REQUIRED. Advance notice is not required to be given to take an action by written consent as provided by this subchapter. (TBCA 9.10.D; TREITA 10.30(D).)

Source Law

[TBCA 9.10]

D. If action is taken with respect to a particular matter by the holders of shares of a class or series by means of a written consent in compliance with Section A of this Article, any provision of this Act that requires advance notice of a meeting or of the proposed action will not apply as to that class or series for such action.

[TREITA 10.30]

(D) If action is taken with respect to a particular matter by the holders of shares of a class or series by means of a written consent in compliance with Subsection (A) of this Section, any provision of this Act that requires advance notice of a meeting or of the proposed action does not apply as to that class or series for that action.

Revisor's Note

This section has no explicit counterpart

in the Texas Non-Profit Corporation Act and Texas Limited Liability Company Act. The revised law is based on the more modern provisions contained in the Texas Business Corporation Act and Texas Real Estate Investment Trust Act and implicit in the provisions of the Texas Non-Profit Corporation Act and Texas Limited Liability Company Act.

[Sections 6.205-6.250 reserved for expansion]

SUBCHAPTER F. VOTING TRUSTS AND VOTING AGREEMENTS

Revised Law

Sec. 6.251. VOTING TRUSTS. (a) Except as provided by this code or the governing documents, any number of owners of an entity may enter into a written voting trust agreement to confer on a trustee the right to vote or otherwise represent ownership or membership interests of the entity.

(b) An ownership or membership interest that is the subject of a voting trust agreement described by Subsection (a) shall be transferred to the trustee named in the agreement for purposes of the agreement.

(c) A copy of a voting trust agreement described by Subsection (a) shall be deposited with the entity at the entity's principal executive office or registered office and is subject to examination by:

(1) an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity; and

(2) a holder of a beneficial interest in the voting trust, whether in person or by the holder's agent or attorney, at any reasonable time for any proper purpose. (TBCA 2.30.A; TREITA 13.20(A).)

Source Law

[TBCA 2.30]

A. Any number of shareholders of a corporation may enter into a written voting trust agreement for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent shares of the corporation. The shares that are to be subject to the agreement shall be transferred to the trustee or trustees for purposes of the agreement, and a counterpart of the agreement shall be deposited with the corporation at its principal place of business or registered office. The counterpart of the voting trust agreement so

deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

[TREITA 13.20]

(A) Any number of shareholders of a real estate investment trust may enter into a written voting trust agreement to confer on a trustee or trustees the right to vote or otherwise represent shares of the real estate investment trust. The shares that are to be subject to the agreement shall be transferred to the trustee or trustees for purposes of the agreement, and a counterpart of the agreement shall be deposited with the real estate investment trust at its principal place of business or registered office. The counterpart of the voting trust agreement deposited with the real estate investment trust shall be subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent or attorney, as are the books and records of the real estate investment trust and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Revisor's Note

Sections 6.251 and 6.252 contain provisions relating to voting trusts and voting agreements. These provisions are materially the same as those found in the Texas Business Corporation Act and Texas Real Estate Investment Trust Act, but are new for limited liability companies. The Texas Limited Liability Company Act does not contain a similar provision. These sections do not apply to nonprofit corporations because nonprofit corporations do not have

"owners."

Revised Law

Sec. 6.252. VOTING AGREEMENTS. (a) Except as provided by this code or the governing documents, any number of owners of an entity, or any number of owners of the entity and the entity itself, may enter into a written voting agreement to provide the manner of voting of the ownership interests of the entity. A voting agreement entered into under this subsection is not part of the governing documents of the entity.

(b) A copy of a voting agreement entered into under Subsection (a):

(1) shall be deposited with the entity at the entity's principal executive office or registered office; and

(2) is subject to examination by an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity.

(c) A voting agreement entered into under Subsection (a) is specifically enforceable against the holder of an ownership interest that is the subject of the agreement, and any successor or transferee of the holder, if:

(1) the voting agreement is noted conspicuously on the certificate representing the ownership interests; or

(2) a notation of the voting agreement is contained in a notice sent by or on behalf of the entity, if the ownership interest is not represented by a certificate.

(d) Except as provided by Subsection (e), a voting agreement entered into under Subsection (a) is specifically enforceable against any person, other than a transferee for value, after the time the person acquires actual knowledge of the existence of the agreement.

(e) An otherwise enforceable voting agreement entered into under Subsection (a) is not enforceable against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer, or any subsequent transferee, without regard to value, if the voting agreement is not noted as required by Subsection (c).

(f) Section 6.251 does not apply to a voting agreement entered into under Subsection (a). (TBCA 2.30.B; TREITA 13.20(B).)

Source Law

[TBCA 2.30]

B. Any number of shareholders of a corporation, or any number of shareholders of a corporation and the corporation itself, may enter into a written voting agreement for the purpose of providing that shares of the

corporation shall be voted in the manner prescribed in the agreement. A counterpart of the agreement shall be deposited with the corporation at its principal place of business or registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation. The agreement, if noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, if notation of the agreement is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the agreement, shall be specifically enforceable against the holder of those shares or any successor or transferee of the holder. Unless noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, unless notation of the agreement is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the agreement, the agreement, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer or against any subsequent transferee (whether or not for value), but the agreement shall be specifically enforceable against any other person who is not a transferee for value from and after the time that the person acquires actual knowledge of the existence of the agreement. A voting agreement entered into pursuant to this Section B is not subject to the provisions of Section A of this Article.

[TREITA 13.20]

(B) Any number of shareholders of a real estate investment trust, or any number of shareholders of a real estate investment trust and the real estate investment trust itself, may enter into a written voting agreement for the purpose of providing that

shares of the real estate investment trust must be voted in the manner prescribed in the agreement. A counterpart of the agreement shall be deposited with the real estate investment trust at its principal place of business or registered office and shall be subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent or attorney, as are the books and records of the real estate investment trust. The agreement is specifically enforceable against the holders of those shares or any successor or transferee of the holder, if the agreement is noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, if notation of the agreement is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the shares that are subject to the agreement. Unless noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, unless notation of the agreement is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the shares that are subject to the agreement, the agreement, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer or against any subsequent transferee, whether or not for value. The agreement is specifically enforceable against any other person who is not a transferee for value from and after the time that the person acquires actual knowledge of the existence of the agreement. A voting agreement entered into pursuant to this Subsection is not subject to Subsection (A) of this Section.

Revisor's Note

See the revisor's note to Section 6.251.
[Sections 6.253-6.300 reserved for expansion]

SUBCHAPTER G. APPLICABILITY OF CHAPTER TO PARTNERSHIPS

Revised Law

Sec. 6.301. APPLICABILITY OF CHAPTER TO PARTNERSHIPS. This chapter does not apply to a general partnership or a limited partnership except to the extent its governing documents specify. (New.)

Revisor's Note

No substantive change is intended. Existing partnership statutes do not have provisions similar to those in Chapter 6. Partnerships were excluded from this chapter to take into account their often informal nature; however, partners may elect to adopt these provisions by agreement.

Revised Law

Sec. 6.302. APPLICABILITY OF SUBCHAPTERS C AND D TO LIMITED LIABILITY COMPANIES. Subchapters C and D do not apply to a limited liability company except to the extent its governing documents specify. (New.)

Revisor's Note

No substantive change is intended. The Texas Limited Liability Company Act does not have provisions similar to those of Subchapters C and D. Limited liability companies were excluded from Subchapters C and D to take into account their more informal nature; however, members may elect to adopt these provisions by agreement.

CHAPTER 7. LIABILITY

Revised Law

Sec. 7.001. LIMITATION OF LIABILITY OF GOVERNING PERSON.

(a) Subsections (b) and (c) apply to:

- (1) a domestic entity other than a partnership or limited liability company;
- (2) another organization incorporated or organized under another law of this state; and
- (3) to the extent permitted by federal law, a federally chartered bank, savings and loan association, or credit union.

(b) The certificate of formation or similar instrument of an organization to which this section applies may provide that a governing person of the organization is not liable, or is liable only to the extent provided by the certificate of formation or similar instrument, to the organization or its owners or members for monetary damages for an act or omission by the person in the person's capacity as a governing person.

(c) Subsection (b) does not authorize the elimination or limitation of the liability of a governing person to the extent

the person is found liable under applicable law for:

- (1) a breach of the person's duty of loyalty, if any, to the organization or its owners or members;
 - (2) an act or omission not in good faith that:
 - (A) constitutes a breach of duty of the person to the organization; or
 - (B) involves intentional misconduct or a knowing violation of law;
 - (3) a transaction from which the person received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the person's duties; or
 - (4) an act or omission for which the liability of a governing person is expressly provided by an applicable statute.
- (d) The liability of a governing person may be limited or restricted:

- (1) in a general partnership to the extent permitted under Chapter 152;
- (2) in a limited partnership to the extent permitted under Chapter 153 and, to the extent applicable to limited partnerships, Chapter 152; and
- (3) in a limited liability company to the extent permitted under Section 101.401. (TMCLA 7.06.)

Source Law

7.06. A. In this article:

- (1) "Articles of incorporation" means the articles of incorporation or association of a corporation, the charter of a corporation, or any other document required to incorporate or organize a corporation under the laws of this state.
- (2) "Corporation" means:
 - (a) Any corporation, association, or other organization incorporated or organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), Subtitle A, B, C, or D, Title 3, Finance Code, or a predecessor of that law, Chapter 181, Finance Code, or a predecessor of that law, the Insurance Code, Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes), Articles 1399 through 1407, Revised Statutes, Article 1448, Revised

Statutes, [Repealed] Section 2, Chapter 42, Acts of the 42nd Legislature, 3rd Called Session, 1932 (Article 1524c, Vernon's Texas Civil Statutes), the State Housing Law (Article 1528a, Vernon's Texas Civil Statutes), the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), the Automobile Club Services Act (Article 1528d, Vernon's Texas Civil Statutes), [Repealed; see, now, V.T.C.A., Transportation Code Sec. 722.001 et seq.] the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), the Texas Mutual Trust Investment Company Act (Article 1528i, Vernon's Texas Civil Statutes), Chapter 221, Health and Safety Code, the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes), [Repealed; see, now, V.T.C.A., Transportation Code Sec. 431.001 et seq.] the Cultural Education Facilities Corporation Act (Article 1528m, Vernon's Texas Civil Statutes), Chapter 262, Health and Safety Code, Chapter 264, Health and Safety Code, Title 4, Agriculture Code, [V.T.C.A., Agriculture Code Sec. 51.001 et seq.] Subchapter A, Chapter 301, Health and Safety Code, Subchapter B, Chapter 301, Health and Safety Code, [V.T.C.A., Health & Safety Code Sec. 301.031 et seq.] the Higher Education Authority Act, Chapter 53, Education Code, or Chapter 394, Local Government Code;

(b) Any corporation, association, or other organization incorporated or organized under the laws of this state that is governed in whole or in part by the Texas Business Corporation Act, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes); or

(c) To the extent permitted

by federal law, any federally chartered bank, savings and loan association, or credit union.

(3) "Director" means an individual who is a director or trustee of a corporation.

B. The articles of incorporation of a corporation may provide that a director of the corporation shall not be liable, or shall be liable only to the extent provided in the articles of incorporation, to the corporation or its shareholders or members for monetary damages for an act or omission in the director's capacity as a director, except that this article does not authorize the elimination or limitation of the liability of a director to the extent the director is found liable for:

(1) a breach of the director's duty of loyalty to the corporation or its shareholders or members;

(2) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;

(3) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or

(4) an act or omission for which the liability of a director is expressly provided by an applicable statute.

Revisor's Note

No substantive change is intended. Subsections (a) through (c) of Section 7.001 are based on Article 7.06, Texas Miscellaneous Corporation Laws Act. They permit domestic entities, other than partnerships or limited liability companies, and other organizations formed under other Texas laws to adopt provisions in their certificates of formation or similar instruments that generally exonerate or limit liability of a governing person for monetary damages to the organization, or its owners or

members, for the governing person's acts or omissions in that capacity. The organization may not eliminate or limit such liability to the extent the person (1) has breached a duty of loyalty, (2) has taken action or omitted to act not in good faith in such a way that it breached some other duty owed to the entity or involved intentional misconduct or knowing violation of the law, (3) has received an improper benefit, or (4) is otherwise made liable by statute.

The scope of Subsections (a) through (c), like their predecessor Article 7.06, Texas Miscellaneous Corporation Laws Act, do not encompass partnerships and limited liability companies. The Texas Limited Liability Company Act, Texas Revised Partnership Act, and Texas Revised Limited Partnership Act authorize limited liability companies and partnerships to modify the duties and liabilities of members, managers, and partners, subject to certain express limitations in the case of partnerships. The code continues, in the provisions applicable to limited liability companies in Title 3 and partnerships in Title 4, the authorization given these entities to modify duties and liabilities in the governing documents of these entities. Subsection (d) adds a cross-reference to these other provisions.

CHAPTER 8. INDEMNIFICATION AND INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 8.001. DEFINITIONS. In this chapter:

(1) "Delegate" means a person who is serving or who has served as a representative of an enterprise at the request of that enterprise at another enterprise. A person is a delegate to an employee benefit plan if the performance of the person's official duties to the enterprise also imposes duties on or otherwise involves service by the person to the plan or participants in or beneficiaries of the plan.

(2) "Enterprise" means a domestic entity or an organization subject to this chapter, including a predecessor domestic entity or organization.

(3) "Expenses" includes:

(A) court costs, a judgment, a penalty, a settlement, a fine, and an excise or similar tax, including an excise tax assessed against the person with respect to an

employee benefit plan; and

(B) reasonable attorney's fees.

(4) "Former governing person" means a person who was a governing person of an enterprise.

(5) "Judgment" includes an arbitration award.

(6) "Official capacity" means:

(A) with respect to a governing person, the office of the governing person in the enterprise or the exercise of authority by or on behalf of the governing person under this code or the governing documents of the enterprise; and

(B) with respect to a person other than a governing person, the elective or appointive office, if any, in the enterprise held by the person or the relationship undertaken by the person on behalf of the enterprise.

(7) "Predecessor enterprise" means a sole proprietorship or organization that is a predecessor to an enterprise in:

(A) a merger, conversion, consolidation, or other transaction in which the liabilities of the predecessor enterprise are transferred or allocated to the enterprise by operation of law; or

(B) any other transaction in which the enterprise assumes the liabilities of the predecessor enterprise and the liabilities that are the subject matter of this chapter are not specifically excluded.

(8) "Proceeding" means:

(A) a threatened, pending, or completed action or other proceeding, whether civil, criminal, administrative, arbitrative, or investigative;

(B) an appeal of an action or proceeding described by Paragraph (A); and

(C) an inquiry or investigation that could lead to an action or proceeding described by Paragraph (A).

(9) "Representative" means a person serving as a partner, director, officer, venturer, proprietor, trustee, employee, or agent of an enterprise or serving a similar function for an enterprise.

(10) "Respondent" means a person named as a respondent or defendant in a proceeding. (TBCA 2.02-1.A, P, R (part), T (part); TNPCA 2.22A.A, P, R(1) (part), T (part); TREITA 9.20(A) (part), (P), (R) (part), (T) (part); TRLPA 11.01, 11.16, 11.18 (part), 11.20 (part); New.)

Source Law

[TBCA 2.02-1]

A. In this article:

(1) "Corporation" includes any domestic or foreign predecessor entity of the

corporation in a merger, conversion, or other transaction in which some or all of the liabilities of the predecessor are transferred to the corporation by operation of law and in any other transaction in which the corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this article.

(2) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity.

(3) "Expenses" include court costs and attorneys' fees.

(4) "Official capacity" means
(a) when used with respect to a director, the office of director in the corporation, and

(b) when used with respect to a person other than a director, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but

(c) in both Paragraphs (a) and (b) does not include service for any other foreign or domestic corporation or any employee benefit plan, other enterprise, or other entity.

(5) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

P. A corporation may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of

the corporation but who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity to the same extent that it may indemnify and advance expenses to directors under this article.

R. A corporation may purchase and maintain insurance or another arrangement on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity,

T. For purposes of this article, the corporation is deemed to have requested a director to serve as a trustee, employee, agent, or similar functionary of an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. . . .

[TNPCA 2.22A]

A. In this article:

(1) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the corporation by operation of law and in any other transaction in which the corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this article.

(2) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request

of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(3) "Expenses" includes court costs and attorneys' fees.

(4) "Official capacity" means:

(a) when used with respect to a director, the office of director in the corporation; and

(b) when used with respect to a person other than a director, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation; but

(c) in both Paragraphs (a) and (b) does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(5) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitratative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

R. (1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise

T. For purposes of this article, the corporation is deemed to have requested a director to serve an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. . . .

[TREITA 9.20]

(A) . . .

(1) "Trust Manager" means any person who is or was a trust manager of the real estate investment trust and any person who, while a trust manager of the real estate investment trust, is or was serving, at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust, foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

. . .

(3) "Official capacity":

(a) when used with respect to a trust manager, means the office of trust manager in the real estate investment trust; and

(b) when used with respect to a person other than a trust manager, means the elective or appointive office in the real estate investment trust held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf

of the real estate investment trust; but

(c) in both paragraphs (a) and (b) does not include service for any other real estate investment trust or foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(4) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

(5) "Real estate investment trust" includes any domestic or foreign predecessor of the real estate investment trust in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the real estate investment trust by operation of law and in any other transaction in which the real estate investment trust assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Section.

(P) A real estate investment trust may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the real estate investment trust but who are or were serving at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to trust managers under this Section.

(R) A real estate investment trust may purchase and maintain insurance or another arrangement on behalf of any person who is or

was a trust manager officer, employee, or agent of the real estate investment trust or who is or was serving at the request of the real estate investment trust as a trust manager or a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise,

(T) For purposes of this Section, the real estate investment trust is deemed to have requested a trust manager to serve an employee benefit plan whenever the performance by him of his duties to the real estate investment trust also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. . . .

[TRLPA]

11.01. In this article:

(1) "Limited partnership" includes a domestic or foreign predecessor entity of the limited partnership in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the limited partnership by operation of law and in any other transaction in which the limited partnership assumes the liabilities of the predecessor but does not specifically exclude liabilities that are governed by this article.

(2) "Enterprise" means a foreign or domestic limited partnership, corporation, general partnership, joint venture, sole proprietorship, trust, employee benefit plan, or similar entity.

(3) "Expenses" includes court costs and attorney's fees.

(4) "General partner" includes:

(A) any person who, while a general partner of a limited partnership, is or was serving at the request of the limited partnership as a representative of an enterprise; and

(B) a representative of an enterprise that is a general partner of the limited partnership.

(5) "Official capacity" means:

(A) if used with respect to a general partner, the exercise of authority by or on behalf of a general partner under this Act or the partnership agreement, other than service for another enterprise; and

(B) if used with respect to a limited partner, employee, or agent, the relationship undertaken by the limited partner, employee, or agent on behalf of the limited partnership, other than service for another enterprise.

(6) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

(7) "Representative" means a person serving as a partner, director, officer, venturer, proprietor, trustee, employee, or agent of an enterprise or serving a similar function for an enterprise.

[TRLPA]

11.16. A limited partnership may indemnify and advance expenses to persons who are not or were not limited partners, employees, or agents of the limited partnership but who are or were serving at the request of the limited partnership as a representative of another enterprise to the same extent that it may indemnify and advance expenses to a general partner under this article.

[TRLPA]

11.18. Except as otherwise provided by this article, and unless otherwise provided by the partnership agreement, a limited partnership may purchase and maintain insurance or another arrangement on behalf of any person who is or was a general partner,

limited partner, employee, or agent of the limited partnership, or who is or was serving at the request of the limited partnership as a representative of another enterprise,

[TRLPA]

11.20. For purposes of this article, the limited partnership is considered to have requested a general partner to serve an employee benefit plan if the performance by a general partner of the general partner's duties to the limited partnership also imposes duties on or otherwise involves services by the general partner to the plan or participants in or beneficiaries of the plan. . . .

Revisor's Note

No substantive change is intended. The section contains definitions for Chapter 8 but does not include one for "governing person," which is defined in Section 1.002(37). The term "governing person" is substituted for the terms "director," "trust manager," and "general partner."

"Delegate" is new; it defines without material change the relationships described but not defined in operative sections--Sections P, R, and T, Article 2.02-1, Texas Business Corporation Act; Sections P, R, and T, Article 2.22.A, Texas Non-Profit Corporation Act; Sections 9.20(P), (R), and (T), Texas Real Estate Investment Trust Act; and Sections 11.16, 11.18, and 11.20, Texas Revised Limited Partnership Act.

"Enterprise" includes "organization," which is defined in Section 1.002(62) to include all these entities in the source law: "corporation, limited or general partnership, limited liability company, . . . real estate investment trust" Other entities included in "organization" and, therefore, in "enterprise" and Chapter 8--"joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization"--lack express indemnification

provisions. However, many entities or organizations, including for example professional associations (Section 25, Texas Professional Association Act) and banks (Section 31.006, Finance Code), incorporate corporate law to supplement their governing statutes and thereby already incorporate the existing indemnification provisions contained in the Texas Business Corporation Act and Texas Non-Profit Corporation Act.

Revised Law

Sec. 8.002. APPLICATION OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to a:

- (1) general partnership; or
- (2) limited liability company.

(b) The governing documents of a general partnership or limited liability company may adopt provisions of this chapter or may contain enforceable provisions relating to:

- (1) indemnification;
- (2) advancement of expenses; or
- (3) insurance or another arrangement to indemnify or hold harmless a governing person. (TLLCA 2.20.A; TRPA 1.03(a).)

Source Law

[TLLCA 2.20]

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.

[TRPA 1.03]

(a) Partnership Agreement Controls. Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and the partnership. To the extent that the partnership agreement does not otherwise provide, this Act governs the relations of the partners and between the partners and the partnership.

Revisor's Note

No substantive change is intended.
General partnerships and limited liability

companies have no statutory limitations on indemnification, advancement of expenses, or insurance for their governing persons.

Revised Law

Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. (a) The certificate of formation of an enterprise may restrict the circumstances under which the enterprise must or may indemnify or may advance expenses to a person under this chapter.

(b) The written partnership agreement of a limited partnership may restrict the circumstances in the same manner as the certificate of formation under Subsection (a). (TBCA 2.02-1.M, U; TNPCA 2.22A.M, U; TREITA 9.20(M), (U); TRLPA 11.13, 11.21.)

Source Law

[TBCA 2.02-1]

M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

U. The articles of incorporation of a corporation may restrict the circumstances under which the corporation is required or permitted to indemnify a person under Section H, I, J, O, P, or Q of this article.

[TNPCA 2.22A]

M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

U. The articles of incorporation of a corporation may restrict the circumstances under which the corporation is required or permitted to indemnify a person under Section H, I, J, O, P, or Q of this article.

[TREITA 9.20]

(M) A provision for a real estate investment trust to indemnify or to advance expenses to a trust manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the declaration of trust, the bylaws, a resolution of shareholders or trust managers, an agreement, or otherwise, except in accordance with Subsection (R) of this Section, is valid only to the extent it is consistent with this Section as limited by the declaration of trust, if such a limitation exists.

(U) The declaration of trust of a real estate investment trust may restrict the circumstances under which the real estate investment trust is required or permitted to indemnify a person under Subsection (H), (I), (J), (O), (P), or (Q) of this Section.

[TRLPA]

11.13. A provision for a limited partnership to indemnify or to advance expenses to a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the limited partnership agreement, a resolution of the general partners or the limited partners, an agreement, or otherwise, except in accordance with Section 11.18 of this Act, is valid only to the extent that it is consistent with this article or with the applicable reimbursement provisions of the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), or the Texas Revised Partnership Act and its subsequent amendments as limited by the limited partnership agreement, if such a limitation exists.

[TRLPA]

11.21. The written partnership agreement of a limited partnership may restrict the circumstances under which the limited partnership is required or permitted to indemnify a person under Section 11.08, 11.09, 11.10, 11.15, 11.16, or 11.17.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 8.004. LIMITATIONS IN CHAPTER. Except as provided in Section 8.151, a provision for an enterprise to indemnify or advance expenses to a governing person is valid only to the extent it is consistent with this chapter. (TBCA 2.02-1.M; TNPCA 2.22A.M; TREITA 9.20(M); TRLPA 11.13.)

Source Law

[TBCA 2.02-1]

M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

[TNPCA 2.22A]

M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

[TREITA 9.20]

(M) A provision for a real estate

investment trust to indemnify or to advance expenses to a trust manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the declaration of trust, the bylaws, a resolution of shareholders or trust managers, an agreement, or otherwise, except in accordance with Subsection (R) of this Section, is valid only to the extent it is consistent with this Section as limited by the declaration of trust, if such a limitation exists.

[TRLPA]

11.13. A provision for a limited partnership to indemnify or to advance expenses to a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the limited partnership agreement, a resolution of the general partners or the limited partners, an agreement, or otherwise, except in accordance with Section 11.18 of this Act, is valid only to the extent that it is consistent with this article or with the applicable reimbursement provisions of the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), or the Texas Revised Partnership Act and its subsequent amendments as limited by the limited partnership agreement, if such a limitation exists.

Revisor's Note

No substantive change is intended.

[Sections 8.005-8.050 reserved for expansion]

SUBCHAPTER B. MANDATORY AND COURT-ORDERED INDEMNIFICATION

Revised Law

Sec. 8.051. MANDATORY INDEMNIFICATION. (a) An enterprise shall indemnify a governing person or former governing person against reasonable expenses actually incurred by the person in connection with a proceeding in which the person is a respondent because the person is or was a governing person if the person is wholly successful, on the merits or otherwise, in the defense of the proceeding.

(b) A court that determines, in a suit for indemnification, that a governing person is entitled to indemnification under this

section shall order indemnification and award to the person the expenses incurred in securing the indemnification. (TBCA 2.02-1.H, I; TNPCA 2.22A.H, I; TREITA 9.20(H), (I); TRLPA 11.08, 11.09.)

Source Law

[TBCA 2.02-1]

H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

I. If, in a suit for the indemnification required by Section H of this article, a court of competent jurisdiction determines that the director is entitled to indemnification under that section, the court shall order indemnification and shall award to the director the expenses incurred in securing the indemnification.

[TNPCA 2.22A]

H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

I. If, in a suit for the indemnification required by Section H of this article, a court of competent jurisdiction determines that the director is entitled to indemnification under that section, the court shall order indemnification and shall award to the director the expenses incurred in securing the indemnification.

[TREITA 9.20]

(H) A real estate investment trust shall indemnify a trust manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a trust manager if he has been wholly successful, on the merits or otherwise, in

the defense of the proceeding.

(I) If, in a suit for the indemnification required by Subsection (H) of this Section, a court of competent jurisdiction determines that the trust manager is entitled to indemnification under that Subsection, the court shall order indemnification and shall award to the trust manager the expenses incurred in securing the indemnification.

[TRLPA]

11.08. A limited partnership shall indemnify a general partner against reasonable expenses incurred by the general partner in connection with a proceeding in which the general partner is a named defendant or respondent because the general partner is or was a general partner if the general partner has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

11.09. If, in a suit for the indemnification required by Section 11.08 of this Act, a court of competent jurisdiction determines that the general partner is entitled to indemnification under that section, the court shall order indemnification and shall award to the general partner the expenses incurred in securing the indemnification.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 8.052. COURT-ORDERED INDEMNIFICATION. (a) On application of a governing person, former governing person, or delegate and after notice is provided as required by the court, a court may order an enterprise to indemnify the person to the extent the court determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances.

(b) This section applies without regard to whether the governing person, former governing person, or delegate applying to the court satisfies the requirements of Section 8.101 or has been found liable:

- (1) to the enterprise; or
- (2) because the person improperly received a personal

benefit, without regard to whether the benefit resulted from an action taken in the person's official capacity.

(c) The indemnification ordered by the court under this section is limited to reasonable expenses if the governing person, former governing person, or delegate is found liable:

(1) to the enterprise; or

(2) because the person improperly received a personal benefit, without regard to whether the benefit resulted from an action taken in the person's official capacity. (TBCA 2.02-1.J; TNPCA 2.22A.J; TREITA 9.20(J); TRLPA 11.10.)

Source Law

[TBCA 2.02-1]

J. If, upon application of a director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been found liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding.

[TNPCA 2.22A]

J. If, upon application of a director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been found liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable; but if the person is found liable to the corporation or is found liable on the basis

that personal benefit was improperly received by the person, the indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding.

[TREITA 9.20]

(J) If, upon application of a trust manager, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the trust manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Subsection (B) of this Section or has been found liable in the circumstances described by Subsection (C) of this Section, the court may order the indemnification that the court determines is proper and equitable; but if the trust manager is found liable to the real estate investment trust or is found liable on the basis that personal benefit was improperly received by the trust manager, the indemnification shall be limited to reasonable expenses actually incurred by the trust manager in connection with the proceeding.

[TRLPA]

11.10. If, on application of a general partner, a court of competent jurisdiction determines, after giving notice that the court considers necessary, that the general partner is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether the general partner has met the requirements set forth in Section 11.02 of this Act or has been adjudged liable in the circumstances described by Section 11.03 of this Act, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the general partner is found liable to the limited partnership or the limited partners or if the general partner is found liable on the basis that personal benefit was

improperly received by the general partner, whether or not the benefit resulted from an action taken in the general partner's official capacity.

Revisor's Note

No substantive change is intended.

[Sections 8.053-8.100 reserved for expansion]

SUBCHAPTER C. PERMISSIVE INDEMNIFICATION AND ADVANCEMENT
OF EXPENSES

Revised Law

Sec. 8.101. PERMISSIVE INDEMNIFICATION. (a) An enterprise may indemnify a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding to the extent permitted by Section 8.102 if it is determined in accordance with Section 8.103 that:

(1) the person:

(A) acted in good faith;

(B) reasonably believed:

(i) in the case of conduct in the person's official capacity, that the person's conduct was in the enterprise's best interests; and

(ii) in any other case, that the person's conduct was not opposed to the enterprise's best interests; and

(C) in the case of a criminal proceeding, did not have a reasonable cause to believe the person's conduct was unlawful;

(2) with respect to expenses, the amount of expenses other than a judgment is reasonable; and

(3) indemnification should be paid.

(b) Action taken or omitted by a governing person or delegate with respect to an employee benefit plan in the performance of the person's duties for a purpose reasonably believed by the person to be in the interest of the participants and beneficiaries of the plan is for a purpose that is not opposed to the best interests of the enterprise.

(c) Action taken or omitted by a delegate to another enterprise for a purpose reasonably believed by the delegate to be in the interest of the other enterprise or its owners or members is for a purpose that is not opposed to the best interests of the enterprise.

(d) A person does not fail to meet the standard under Subsection (a)(1) solely because of the termination of a proceeding by:

(1) judgment;

(2) order;

(3) settlement;

(4) conviction; or

(5) a plea of nolo contendere or its equivalent.
(TBCA 2.02-1.B, D (part), G (part), P, T (part); TNPCA 2.22A.B, D (part), G (part), P, T (part); TREITA 9.20(B), (D) (part), (G) (part), (P), (T) (part); TRLPA 11.02, 11.04 (part), 11.07 (part), 11.20 (part).)

Source Law

[TBCA 2.02-1]

B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director only if it is determined in accordance with Section F of this article that the person:

(1) conducted himself in good faith;

(2) reasonably believed:

(a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation's best interests; and

(b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

D. The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article. . . .

G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible,

P. A corporation may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the corporation but who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or

similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity to the same extent that it may indemnify and advance expenses to directors under this article.

T. . . . Action taken or omitted by a director with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the corporation.

[TNPCA 2.22A]

B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director only if it is determined in accordance with Section F of this article that the person:

- (1) conducted himself in good faith;
- (2) reasonably believed:
 - (a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation's best interests; and
 - (b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and
- (3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

D. The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article. . . .

G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible,

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

T. . . . Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the corporation.

[TREITA 9.20]

(B) A real estate investment trust may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a trust manager only if it is determined in accordance with Subsection (F) of this Section that the person:

(1) conducted himself in good faith;

(2) reasonably believed:

(a) in the case of conduct in his official capacity as a trust manager of the real estate investment trust, that his conduct was in the real estate investment trust's best interests; and

(b) in all other cases, that his conduct was at least not opposed to the real estate investment trust's best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful.

(D) The termination of a proceeding by

judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Subsection (B) of this Section. . . .

(G) Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible,

(P) A real estate investment trust may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the real estate investment trust but who are or were serving at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to trust managers under this Section.

(T) . . . Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the real estate investment trust.

[TRLPA]

11.02. If provided in a written partnership agreement, a limited partnership may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a general partner only if it is determined in accordance with Section 11.06

of this Act that the person:

(1) acted in good faith;

(2) reasonably believed:

(A) in the case of conduct in the person's official capacity as a general partner of the limited partnership, that the person's conduct was in the limited partnership's best interests; and

(B) in all other cases, that the person's conduct was at least not opposed to the limited partnership's best interests; and

(3) in the case of a criminal proceeding, had no reasonable cause to believe that the person's conduct was unlawful.

[TRLPA]

11.04. The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not alone determine that the person did not meet the requirements provided by Section 11.02 of this Act. . . .

[TRLPA]

11.07. Authorization of indemnification and determination of a reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible,

[TRLPA]

11.20. . . . Action taken or omitted by a general partner with respect to an employee benefit plan in the performance of the general partner's duties for a purpose reasonably believed by the general partner to be in the interest of the participants and beneficiaries of the plan is considered to be for a purpose that is not opposed to the best interests of the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 8.102. GENERAL SCOPE OF PERMISSIVE INDEMNIFICATION.

(a) Subject to Subsection (b), an enterprise may indemnify a

governing person, former governing person, or delegate against:

- (1) a judgment; and
- (2) expenses, other than a judgment, that are reasonable and actually incurred by the person in connection with a proceeding.

(b) Indemnification under this subchapter of a person who is found liable to the enterprise or is found liable because the person improperly received a personal benefit:

- (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding;
- (2) does not include a judgment, a penalty, a fine, and an excise or similar tax, including an excise tax assessed against the person with respect to an employee benefit plan; and
- (3) may not be made in relation to a proceeding in which the person has been found liable for:

- (A) wilful or intentional misconduct in the performance of the person's duty to the enterprise;

- (B) breach of the person's duty of loyalty owed to the enterprise; or

- (C) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the enterprise.

(c) A governing person, former governing person, or delegate is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by law. (TBCA 2.02-1.C, D (part), E, P; TNPCA 2.22A.C, D (part), E, P; TREITA 9.20(C), (D) (part), (E), (P); TRLPA 11.03, 11.04 (part), 11.05, 11.16.)

Source Law

[TBCA 2.02-1]

C. Except to the extent permitted by Section E of this article, a director may not be indemnified under Section B of this article in respect of a proceeding:

- (1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

- (2) in which the person is found liable to the corporation.

D. . . . A person shall be deemed to have been found liable in respect of any claim, issue or matter only after the person shall have been so adjudged by a court of

competent jurisdiction after exhaustion of all appeals therefrom.

E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding and (2) shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the corporation.

P. A corporation may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the corporation but who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity to the same extent that it may indemnify and advance expenses to directors under this article.

[TNPCA 2.22A]

C. Except to the extent permitted by Section E of this article, a director may not be indemnified under Section B of this article in respect of a proceeding:

(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) in which the person is found liable to the corporation.

D. . . . A person shall be deemed to have been found liable in respect of any claim, issue or matter only after the person

shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom.

E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding, and (2) shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the corporation.

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

[TREITA 9.20]

(C) Except to the extent permitted by Subsection (E) of this Section, a trust manager may not be indemnified under Subsection (B) of this Section in respect of a proceeding:

(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) in which the person is found liable to the real estate investment trust.

(D) . . . A person shall be deemed to have been found liable in respect of any claim, issue, or matter only after the person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom.

(E) A person may be indemnified under Subsection (B) of this Section against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the real estate investment trust or is found liable on the basis that personal benefit was improperly received by the person, the indemnification (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding, and (2) shall not be made in respect of any proceeding in which the person shall have been found liable for wilful or intentional misconduct in the performance of his duty to the real estate investment trust.

(P) A real estate investment trust may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the real estate investment trust but who are or were serving at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to trust managers under this Section.

[TRLPA]

11.03. Except to the extent permitted by Section 11.05 of this Act, a general partner may not be indemnified under Section 11.02 of this Act with respect to a proceeding in which:

(1) the person is found liable on the basis that the person improperly received personal benefit, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) the person is found liable to the limited partnership or the limited partners.

11.04. . . . A person is considered to have been found liable in relation to any claim, issue, or matter only if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

11.05. A general partner may be indemnified under Section 11.02 of this Act against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding, except that if the person is found liable to the limited partnership or the limited partners or is found liable on the basis that the person improperly received personal benefit, the indemnification:

(1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding; and

(2) shall not be made in relation to a proceeding in which the person has been found liable for wilful or intentional misconduct in the performance of the person's duty to the limited partnership or the limited partners.

[TRLPA]

11.16. A limited partnership may indemnify and advance expenses to persons who are not or were not limited partners, employees, or agents of the limited partnership but who are or were serving at the request of the limited partnership as a representative of another enterprise to the same extent that it may indemnify and advance expenses to a general partner under this article.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 8.103. MANNER FOR DETERMINING PERMISSIVE INDEMNIFICATION. (a) Except as provided by Subsections (b) and (c), the determinations required under Section 8.101(a) must be made by:

(1) a majority vote of a quorum composed of the governing persons who at the time of the vote are disinterested and independent;

(2) if a quorum described by Subdivision (1) cannot be obtained, a majority vote of a committee of the governing authority of the enterprise designated to act in the matter by a majority vote of the governing persons and composed solely of one or more governing persons who at the time of the vote are disinterested and independent;

(3) special legal counsel selected by the governing authority of the enterprise, or selected by a committee of the board of directors, by vote in accordance with Subdivision (1) or (2) or, if a quorum described by Subdivision (1) cannot be obtained and a committee described by Subdivision (2) cannot be established, by a majority vote of the governing persons of the enterprise;

(4) the owners or members of the enterprise in a vote that excludes the ownership or membership interests held by each governing person who is not disinterested and independent; or

(5) a unanimous vote of the owners or members of the enterprise.

(b) If special legal counsel determines under Subsection (a)(3) that a person meets the standard under Section 8.101(a)(1), the special legal counsel shall determine whether the amount of expenses other than a judgment is reasonable under Section 8.101(a)(2) but may not determine whether indemnification should be paid under Section 8.101(a)(3). The determination whether indemnification should be paid must be made in a manner specified by Subsection (a)(1), (2), (4), or (5).

(c) A provision contained in the governing documents of the enterprise, a resolution of the owners, members, or governing authority, or an agreement that requires the indemnification of a person who meets the standard under Section 8.101(a)(1) constitutes a determination under Section 8.101(a)(3) that indemnification should be paid even though the provision may not have been adopted or authorized in the same manner as the determinations required under Section 8.101(a). The determinations required under Sections 8.101(a)(1) and (2) must be made in a manner provided by Subsection (a). (TBCA 2.02-1.F, G; TNPCA 2.22A.F, G; TREITA 9.20(F), (G); TRLPA 11.06, 11.07.)

Source Law

[TBCA 2.02-1]

F. A determination of indemnification under Section B of this article must be made:

(1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) by the shareholders in a vote that excludes the shares held by directors who are named defendants or respondents in the proceeding.

G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, or an agreement that makes mandatory the indemnification permitted under Section B of this article shall be deemed to constitute authorization of indemnification in the manner required by this section even though such provision may not have been

adopted or authorized in the same manner as the determination that indemnification is permissible.

[TNPCA 2.22A]

F. A determination of indemnification under Section B of this article must be made:

(1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) by the members in a vote that excludes the vote of directors who are named defendants or respondents in the proceeding.

G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, a resolution of members or directors, or an agreement that makes mandatory the indemnification permitted under Section B of this article shall be deemed to constitute authorization of indemnification in the manner required by this section even

though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

[TREITA 9.20]

(F) A determination to furnish indemnification under Subsection (B) of this Section shall be made only:

(1) by a majority vote of a quorum consisting of trust managers who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the trust managers, designated to act in the matter by a majority vote of all trust managers, consisting solely of two or more trust managers who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the trust managers or a committee thereof by vote as set forth in Subdivision (1) or (2) of this Subsection, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all trust managers; or

(4) by the shareholders in a vote that excludes the shares of beneficial interest held by trust managers who are named defendants or respondents in the proceeding.

(G) Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subdivision (3) of Subsection (F) of this Section for the selection of special legal counsel. A provision contained in the declaration of trust, the bylaws, or an agreement that makes mandatory the indemnification permitted under Subsection (B) of this Section shall be

deemed to constitute authorization of indemnification in the manner required by this Subsection even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

[TRLPA]

11.06. A determination that indemnification is permissible under Section 11.02 of this Act must be made:

(1) by a majority vote of a quorum consisting of general partners who at the time of the vote are not named defendants or respondents in the proceeding;

(2) by special legal counsel selected by the general partners by vote as provided by Subdivision (1) of this section or, if such a quorum cannot be obtained, by a majority vote of all general partners; or

(3) by a majority in interest of the limited partners in a vote that excludes the interests held by general partners who are named defendants or respondents in the proceeding.

11.07. Authorization of indemnification and determination of a reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses must be made in the manner specified by Subdivision (2) of Section 11.06 of this Act governing the selection of special legal counsel. A provision contained in a written partnership agreement, a resolution of the general partners or of a majority in interest of the limited partners, or an agreement that makes mandatory the indemnification permitted under Section 11.02 of this Act, constitutes authorization of indemnification in the manner required by this section even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is

permissible.

Revisor's Note

In Section 8.103(a)(2), a determination that the standard for indemnification in Section 8.101(a) has been met may be made by a committee of one disinterested director if no quorum of disinterested directors can be obtained. Article 2.01-1.F(2), Texas Business Corporation Act, requires two such directors; Section 11.06, Texas Revised Limited Partnership Act, and the Texas Non-Profit Corporation Act have no such provision.

Section 8.103(a)(5) has no explicit source in the Texas Business Corporation Act, Texas Real Estate Investment Trust Act, Texas Revised Limited Partnership Act, or Texas Non-Profit Corporation Act but is implicit in the general principle that all the owners or members of an enterprise may make any disposition of its assets, including indemnification of a governing person.

Revised Law

Sec. 8.104. ADVANCEMENT OF EXPENSES. (a) An enterprise may pay or reimburse reasonable expenses incurred by a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under Section 8.101(a) after the enterprise receives:

(1) a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this chapter; and

(2) a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final determination is that the person has not met that standard or that indemnification is prohibited by Section 8.102.

(b) A provision in the governing documents of the enterprise, a resolution of the owners, members, or governing authority, or an agreement that requires the payment or reimbursement permitted under this section authorizes that payment or reimbursement after the enterprise receives an affirmation and undertaking described by Subsection (a).

(c) The written undertaking required by Subsection (a)(2) must be an unlimited general obligation of the person but need not be secured and may be accepted by the enterprise without regard to the person's ability to make repayment. (TBCA

2.02-1.K, L, P; TNPCA 2.22A.K, L, P; TREITA 9.20(K), (L), (P);
TRLPA 11.11, 11.12, 11.16.)

Source Law

[TBCA 2.02-1]

K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding and without the determination specified in Section F of this article or the authorization or determination specified in Section G of this article, after the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the director against expenses incurred by him in connection with that proceeding is prohibited by Section E of this article. A provision contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, or an agreement that makes mandatory the payment or reimbursement permitted under this section shall be deemed to constitute authorization of that payment or reimbursement.

L. The written undertaking required by Section K of this article must be an unlimited general obligation of the director but need not be secured. It may be accepted without reference to financial ability to make repayment.

P. A corporation may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the corporation but who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or

domestic corporation, employee benefit plan, other enterprise, or other entity to the same extent that it may indemnify and advance expenses to directors under this article.

[TNPCA 2.22A]

K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding and without the determination specified in Section F of this article or the authorization or determination specified in Section G of this article, after the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the director against expenses incurred by him in connection with that proceeding is prohibited by Section E of this article. A provision contained in the articles of incorporation, the bylaws, a resolution of members or directors, or an agreement that makes mandatory the payment or reimbursement permitted under this section shall be deemed to constitute authorization of that payment or reimbursement.

L. The written undertaking required by Section K of this article must be an unlimited general obligation of the director but need not be secured. It may be accepted without reference to financial ability to make repayment.

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar

functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

[TREITA 9.20]

(K) Reasonable expenses incurred by a trust manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the real estate investment trust, in advance of the final disposition of the proceeding and without the determination specified in Subsection (F) of this Section or the authorization or determination specified in Subsection (G) of this Section, after the real estate investment trust receives a written affirmation by the trust manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Section and a written undertaking by or on behalf of the trust manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the trust manager against expenses incurred by him in connection with that proceeding is prohibited by Subsection (E) of this Section. A provision contained in the declaration of trust, the bylaws, a resolution of shareholders or trust managers, or an agreement that makes mandatory the payment or reimbursement permitted under this Subsection shall be deemed to constitute authorization of that payment or reimbursement.

(L) The written undertaking required by Subsection (K) of this Section must be an unlimited general obligation of the trust manager but need not be secured. It may be accepted without reference to financial ability to make repayment.

(P) A real estate investment trust may indemnify and advance expenses to persons who are not or were not officers, employees, or

agents of the real estate investment trust but who are or were serving at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to trust managers under this Section.

[TRLPA]

11.11. The limited partnership may pay or reimburse, in advance of the final disposition of the proceeding, reasonable expenses incurred by a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding, without the determination specified in Section 11.06 of this Act or the authorization or determination specified in Section 11.07 of this Act, after the limited partnership receives a written affirmation by the general partner of the general partner's good faith belief that the general partner has met the standard of conduct necessary for indemnification under this article, and a written undertaking by or on behalf of the general partner to repay the amount paid or reimbursed if it is ultimately determined that the general partner has not met that standard or it is ultimately determined that indemnification of the general partner against expenses incurred by such general partner in connection with that proceeding is prohibited by Section 11.05 of this Act. A provision contained in a written partnership agreement, a resolution of the general partners or of the limited partners, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

11.12. The written undertaking required by Section 11.11 of this Act must be an

unlimited general obligation of the general partner, but need not be secured and may be accepted without reference to financial ability to make repayment.

[TRLPA]

11.16. A limited partnership may indemnify and advance expenses to persons who are not or were not limited partners, employees, or agents of the limited partnership but who are or were serving at the request of the limited partnership as a representative of another enterprise to the same extent that it may indemnify and advance expenses to a general partner under this article.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 8.105. INDEMNIFICATION OF AND ADVANCEMENT OF EXPENSES TO PERSONS OTHER THAN GOVERNING PERSONS. (a) Notwithstanding any other provision of this chapter but subject to Sections 8.003 and 8.004 and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person, including an officer, employee, agent, or delegate, as provided by:

- (1) the enterprise's governing documents;
- (2) general or specific action of the enterprise's governing authority;
- (3) resolution of the enterprise's owners or members;
- (4) contract; or
- (5) common law.

(b) An enterprise shall indemnify and advance expenses to an officer to the same extent that indemnification or advancement of expenses is required under this chapter for a governing person.

(c) A person described by Subsection (a) may seek indemnification or advancement of expenses from an enterprise to the same extent that a governing person may seek indemnification or advancement of expenses under this chapter. (TBCA 2.02-1.0, P, Q; TNPCA 2.22A.0, P, Q; TREITA 9.20(O), (P), (Q); TRLPA 11.15, 11.16, 11.17.)

Source Law

[TBCA 2.02-1]

O. An officer of the corporation shall be indemnified as, and to the same extent,

provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article.

P. A corporation may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the corporation but who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity to the same extent that it may indemnify and advance expenses to directors under this article.

Q. A corporation may indemnify and advance expenses to an officer, employee, agent, or person identified in Section P of this article and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract or as permitted or required by common law.

[TNPCA 2.22A]

O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article.

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director,

officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

Q. A corporation may indemnify and advance expenses to an officer, employee, agent, or person identified in Section P of this article and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract or as permitted or required by common law.

[TREITA 9.20]

(O) An officer of the real estate investment trust shall be indemnified as, and to the same extent, provided by Subsections (H), (I), and (J) of this Section for a trust manager and is entitled to seek indemnification under those Subsections to the same extent as a trust manager. A real estate investment trust may indemnify and advance expenses to an officer, employee, or agent of the real estate investment trust to the same extent that it may indemnify and advance expenses to trust managers under this Section.

(P) A real estate investment trust may indemnify and advance expenses to persons who are not or were not officers, employees, or agents of the real estate investment trust but who are or were serving at the request of the real estate investment trust as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to trust managers under this Section.

(Q) A real estate investment trust may indemnify and advance expenses to an officer, employee, agent, or person identified in Subsection (P) of this Section and who is not a trust manager to such further extent, consistent with law, as may be provided by its declaration of trust, bylaws, general or specific action of its trust managers, or contract or as permitted or required by common law.

[TRLPA]

11.15. A limited partnership may indemnify and advance expenses to a limited partner, employee, or agent of the limited partnership to the same extent that it may indemnify and advance expenses to a general partner under this article.

11.16. A limited partnership may indemnify and advance expenses to persons who are not or were not limited partners, employees, or agents of the limited partnership but who are or were serving at the request of the limited partnership as a representative of another enterprise to the same extent that it may indemnify and advance expenses to a general partner under this article.

11.17. A limited partnership may further indemnify and advance expenses to a limited partner, employee, agent, or person identified in Section 11.16 of this Act and who is not a general partner, to the extent, consistent with law, provided by its partnership agreement, by general or specific action of its general partner, by contract, or as permitted or required by common law.

Revisor's Note

Section 8.105(a)(3) has no explicit source in the Texas Business Corporation Act, Texas Real Estate Investment Trust Act, Texas Non-Profit Corporation Act, or Texas Revised Limited Partnership Act but is implicit in the general principle that the owners or members of an enterprise may make any disposition of its assets for the benefit of a person who is not a governing person. No

other substantive change is intended.

Revised Law

Sec. 8.106. PERMISSIVE INDEMNIFICATION OF AND REIMBURSEMENT OF EXPENSES TO WITNESSES. Notwithstanding any other provision of this chapter, an enterprise may pay or reimburse reasonable expenses incurred by a governing person, officer, employee, agent, delegate, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding. (TBCA 2.02-1.N; TNPCA 2.22A.N; TREITA 9.20(N); TRLPA 11.14.)

Source Law

[TBCA 2.02-1]

N. Notwithstanding any other provision of this article, a corporation may pay or reimburse expenses incurred by a director in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

[TNPCA 2.22A]

N. Notwithstanding any other provision of this article, a corporation may pay or reimburse expenses incurred by a director in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

[TREITA 9.20]

(N) Notwithstanding any other provision of this Section, a real estate investment trust may pay or reimburse expenses incurred by a trust manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

[TRLPA]

11.14. Notwithstanding any other provision of this article, a limited partnership may pay or reimburse expenses incurred by a general partner in connection with the general partner's appearance as a witness or other participation in a proceeding involving or affecting the limited

partnership at a time when the general partner is not a named defendant or respondent in the proceeding.

Revisor's Note

No substantive change is intended.

[Sections 8.107-8.150 reserved for expansion]

SUBCHAPTER D. LIABILITY INSURANCE; REPORTING REQUIREMENTS

Revised Law

Sec. 8.151. INSURANCE AND OTHER ARRANGEMENTS. (a) Notwithstanding any other provision of this chapter, an enterprise may purchase or procure or establish and maintain insurance or another arrangement to indemnify or hold harmless an existing or former governing person, delegate, officer, employee, or agent against any liability:

(1) asserted against and incurred by the person in that capacity; or

(2) arising out of the person's status in that capacity.

(b) The insurance or other arrangement established under Subsection (a) may insure or indemnify against the liability described by Subsection (a) without regard to whether the enterprise otherwise would have had the power to indemnify the person against that liability under this chapter.

(c) Insurance or another arrangement that involves self-insurance or an agreement to indemnify made with the enterprise or a person that is not regularly engaged in the business of providing insurance coverage may provide for payment of a liability with respect to which the enterprise does not otherwise have the power to provide indemnification only if the insurance or arrangement is approved by the owners or members of the enterprise.

(d) For the benefit of persons to be indemnified by the enterprise, an enterprise may, in addition to purchasing or procuring or establishing and maintaining insurance or another arrangement:

(1) create a trust fund;

(2) establish any form of self-insurance, including a contract to indemnify;

(3) secure the enterprise's indemnity obligation by grant of a security interest or other lien on the assets of the enterprise; or

(4) establish a letter of credit, guaranty, or surety arrangement.

(e) Insurance or another arrangement established under this section may be purchased or procured or established and maintained:

(1) within the enterprise; or

(2) with any insurer or other person considered appropriate by the governing authority, regardless of whether all or part of the stock, securities, or other ownership interest in the insurer or other person is owned in whole or in part by the enterprise.

(f) The governing authority's decision as to the terms of the insurance or other arrangement and the selection of the insurer or other person participating in an arrangement is conclusive. The insurance or arrangement is not voidable and does not subject the governing persons approving the insurance or arrangement to liability, on any ground, regardless of whether the governing persons participating in approving the insurance or other arrangement are beneficiaries of the insurance or arrangement. This subsection does not apply in case of actual fraud. (TBCA 2.02-1.R; TNPCA 2.22A.R; TREITA 9.20(R); TRLPA 11.18.)

Source Law

[TBCA 2.02-1]

R. A corporation may purchase and maintain insurance or another arrangement on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, employee benefit plan, other enterprise, or other entity, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article. If the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the shareholders of the corporation. Without limiting the power of the corporation to procure or maintain any kind of insurance or other arrangement, a

corporation may, for the benefit of persons indemnified by the corporation, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person deemed appropriate by the board of directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. In the absence of fraud, the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

[TNPCA 2.22A]

R.(1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(2)(a) In addition to the powers

described in Subsection (1), a corporation may purchase, maintain, or enter into other arrangements on behalf of any person who is or was a director, officer, or trustee of the corporation against any liability asserted against him and incurred by him in such capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(b) If the other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify a person only if coverage for that liability has been approved by the corporation's members, if the corporation has members.

(c) Without limiting the power of the corporation to procure or maintain any kind of other arrangement, a corporation, for the benefit of persons described in Subsection (2)(a) may:

- (i) create a trust fund;
- (ii) establish any form of self-insurance;
- (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation; or
- (iv) establish a letter of credit, guaranty, or surety arrangement.

(d) For the limited purposes of Subsection (2) of this section only, any liability indemnification arrangement, other than coverage through an insurance carrier, is not considered to be the business of insurance under the Insurance Code, including the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Vernon's Texas Civil Statutes), or any other law of this state.

(3) The insurance may be procured or maintained with an insurer, or the other arrangement may be procured, maintained, or established within the corporation or with

any insurer or other person considered appropriate by the board of directors, regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. In the absence of fraud, the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or arrangement is not voidable and does not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

[TREITA 9.20]

(R) A real estate investment trust may purchase and maintain insurance or another arrangement on behalf of any person who is or was a trust manager officer, employee, or agent of the real estate investment trust or who is or was serving at the request of the real estate investment trust as a trust manager or a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the real estate investment trust would have the power to indemnify him against that liability under this Section. If the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the real estate investment trust would not have the power to indemnify the person only if including coverage for the additional

liability has been approved by the shareholders of the real estate investment trust. Without limiting the power of the real estate investment trust to procure or maintain any kind of insurance or other arrangement, a real estate investment trust may, for the benefit of persons indemnified by the real estate investment trust, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the real estate investment trust; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the real estate investment trust or with any insurer or other person deemed appropriate by the trust manager(s) regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the real estate investment trust. In the absence of fraud, the judgment of the trust manager(s) as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the trust manager(s) approving the insurance or arrangement to liability, on any ground, regardless of whether a trust manager participating in the approval is a beneficiary of the insurance or arrangement.

[TRLPA]

11.18. Except as otherwise provided by this article, and unless otherwise provided by the partnership agreement, a limited partnership may purchase and maintain insurance or another arrangement on behalf of any person who is or was a general partner, limited partner, employee, or agent of the limited partnership, or who is or was serving at the request of the limited partnership as a representative of another enterprise, against any liability asserted against the

person and incurred by the person in that capacity or arising out of the person's status in that capacity, regardless of whether the limited partnership would have the power to indemnify the person against that liability under this article. However, if the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or other arrangement may provide for payment of a liability with respect to which the limited partnership would not have the power to indemnify the person only if it includes coverage for the additional liability that has been approved by a majority in interest of the limited partners of the limited partnership. Without limiting the power of the limited partnership to procure or maintain any kind of insurance or other arrangement, a limited partnership may, for the benefit of persons indemnified by the limited partnership, create a trust fund, establish any form of self-insurance, secure its indemnity obligation by grant of a security interest or other lien on the assets of the limited partnership, or establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the limited partnership or with an insurer or other person considered appropriate by the general partner regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the limited partnership. In the absence of actual fraud, the judgment of the general partners as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or other arrangement is not voidable and does not subject the general partners approving the insurance or other arrangement to liability, on any ground, regardless of whether general partners participating in approving the insurance or other arrangement

will be beneficiaries.

Revisor's Note

No substantive change is intended. The source law includes self-insurance but does not explicitly include implementing it by contract to indemnify. A contract to indemnify is within the general power of the enterprise to contract to implement its self-insurance authority.

Revised Law

Sec. 8.152. REPORTS OF INDEMNIFICATION AND ADVANCES. (a) An enterprise shall report in writing to the owners or members of the enterprise an indemnification of or advance of expenses to a governing person.

(b) Subject to Subsection (c), the report must be made with or before the notice or waiver of notice of the next meeting of the owners or members of the enterprise and before the next submission to the owners or members of a consent to action without a meeting.

(c) The report must be made not later than the first anniversary of the date of the indemnification or advance. (TBCA 2.02-1.S; TNPCA 2.22A.S; TREITA 9.20(S); TRLPA 11.19.)

Source Law

[TBCA 2.02-1]

S. Any indemnification of or advance of expenses to a director in accordance with this article shall be reported in writing to the shareholders with or before the notice or waiver of notice of the next shareholders' meeting or with or before the next submission to shareholders of a consent to action without a meeting pursuant to Section A, Article 9.10, of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

[TNPCA 2.22A]

S. Any indemnification of or advance of expenses to a director in accordance with this article shall be reported in writing to the members of the corporation with or before the notice or waiver of notice of the next meeting of members or with or before the next submission to members of a consent to action without a meeting pursuant to Section A,

Article 1396-9.10 of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

[TREITA 9.20]

(S) Any indemnification of or advance of expenses to any person who is or was a trust manager, officer, employee, or agent of the real estate investment trust or who is or was serving at the request of the real estate investment trust as a trust manager or a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another real estate investment trust or of a foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise in accordance with this Section shall be reported in writing to the shareholders with or before the notice or waiver of notice of the next shareholders meeting or with or before the next submission to shareholders of a consent to action without a meeting pursuant to Section 10.30 of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

[TRLPA]

11.19. Any indemnification of or advance of expenses to a general partner in accordance with this article shall be reported promptly in writing to the limited partners. The report must be made not later than six months after the date that the indemnification occurs.

Revisor's Note

Section 11.19, Texas Revised Limited Partnership Act, requires that any indemnification of or advance of expenses by a limited partnership to a general partner is to be reported promptly in writing to the limited partners and, in any event, not later than six months after the date the indemnification occurs. Section 8.152 of the code requires a standardized reporting

deadline of 12 months, which corresponds with the source law in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Real Estate Investment Trust Act. No other substantive change is intended.

CHAPTER 9. FOREIGN ENTITIES

SUBCHAPTER A. REGISTRATION

Revised Law

Sec. 9.001. FOREIGN ENTITIES REQUIRED TO REGISTER. (a) To transact business in this state, a foreign entity must register under this chapter if the entity:

(1) is a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in this state, would require the filing under Chapter 3 of a certificate of formation; or

(2) affords limited liability under the law of its jurisdiction of formation for any owner or member.

(b) A foreign entity described by Subsection (a) must maintain the entity's registration while transacting business in this state. (CAA 43; TBCA 8.01.A (part); TLLCA 7.01.A (part); TNPCA 8.01.A (part); TPCA 19A(a) (part); TRLPA 9.02(a) (part).)

Source Law

[CAA]

43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

[TBCA 8.01]

A. No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. . . .

[TLLCA 7.01]

A. No foreign limited liability company shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. . . .

[TNPCA 8.01]

A. No foreign corporation shall have the right to conduct affairs in this State until it shall have procured a certificate of authority so to do from the Secretary of State. . . .

[TPCA 19A]

(a) A foreign professional legal corporation may apply for a certificate of authority to perform professional legal service in this state by filing an application in accordance with the Texas Business Corporation Act. . . .

[TRLPA 9.02]

(a) Before transacting business in Texas, a foreign limited partnership must register by delivering to the secretary of state the filing fee and one original application for registration as a foreign limited partnership executed by a general partner and a duplicate copy, which need not be an executed original or a photocopy of an executed original. . . .

Revisor's Note

Section 9.001 requires specific kinds of foreign entities, including business trusts, real estate investment trusts, and other entities that protect their owners or members from liability, to register with the appropriate filing officer to transact business in Texas. Some of these entities, such as foreign business trusts, could only qualify to do business in this state as a limited liability company under the Texas Limited Liability Company Act, to the extent they were not allowed to qualify to do business as another type of entity under the source law. Section 9.001 simplifies the test of the type of entity that may register contained in that act and makes registration mandatory. Entities that have no counterpart in Texas law, such as foreign business trusts and limited companies, will be able to register to do business in Texas as that type of entity and will not be forced to qualify

to do business as a limited liability company, as provided by existing law. Section 9.002 controls exceptions to this mandatory registration.

Sections 9.001 and 9.002 refer to "transact business" while the Texas Non-Profit Corporation Act refers to "conduct affairs." No substantive change is intended. The reference to "business" should be construed to include the nonprofit business or affairs of a nonprofit entity.

Chapter 9 does not apply to foreign unincorporated nonprofit associations by virtue of Section 252.017.

Revised Law

Sec. 9.002. FOREIGN ENTITIES NOT REQUIRED TO REGISTER.

(a) A foreign entity not described by Section 9.001(a) may transact business in this state without registering under this chapter.

(b) Subsection (a) does not relieve a foreign entity from the duty to comply with applicable requirements under other law to file or register.

(c) A foreign entity is not required to register under this chapter if other state law authorizes the entity to transact business in this state.

(d) A foreign unincorporated nonprofit association is not required to register under this chapter. (New.)

Revisor's Note

No substantive change is intended. Section 9.002 provides exceptions to Section 9.001 by specifically stating that foreign entities not covered by Section 9.001 do not have to register under Chapter 9 to transact business within the state. However, such entities must file or register if required by any other non-code law. A specific exclusion is added in Subsection (d) for unincorporated nonprofit associations to eliminate any possible confusion due to the permissive filings of appointments of agents to receive service of process under Section 252.011. The primary foreign entity not required to register is a foreign general partnership. Because the Texas Revised Partnership Act and Texas Uniform Unincorporated Nonprofit Association Act do not require the foreign entities covered by those statutes to be registered, the revised law by specifically

stating this exclusion does not represent a substantive change.

Revised Law

Sec. 9.003. PERMISSIVE REGISTRATION. A foreign entity that is eligible under other law of this state to register to transact business in this state, but that is not registered under that law, may register under this chapter unless that registration is prohibited by the other law. The registration under this chapter confers only the authority provided by this chapter. (TLLCA 1.02.A(9).)

Source Law

[TLLCA 1.02.A]

(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 distributions 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

Section 9.003 provides for permissive registration of regulated entities. The source law in the Texas Limited Liability Company Act permits the registration of these other entities as foreign limited liability companies by broadly defining foreign limited liability companies to include those affording limited liability even though the entities are not considered limited liability companies in the jurisdiction of formation. Section 9.003 clarifies that foreign entities prohibited by other law from registering may not register under Chapter 9 and that registration confers only the authority provided by Chapter 9.

Revised Law

Sec. 9.004. REGISTRATION PROCEDURE. (a) A foreign filing entity registers by filing an application for registration as provided by Chapter 4.

(b) The application must state:

(1) the entity's name and, if that name would not comply with Chapter 5, a name that complies with Chapter 5 under which the entity will transact business in this state;

(2) the entity's type;

(3) the entity's jurisdiction of formation;

(4) the date of the entity's formation;

(5) that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation;

(6) for a foreign entity other than a foreign limited partnership:

(A) each business or activity that the entity proposes to pursue in this state, which may be stated to be any lawful business or activity under the law of this state; and

(B) that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation;

(7) the date the foreign entity began or will begin to transact business in this state;

(8) the address of the principal office of the foreign filing entity;

(9) the address of the initial registered office and the name and the address of the initial registered agent for service of process that Chapter 5 requires to be maintained;

(10) the name and address of each of the entity's governing persons; and

(11) that the secretary of state is appointed the agent of the foreign filing entity for service of process under the circumstances provided by Section 5.251.

(c) A foreign filing entity may register regardless of any differences between the law of the entity's jurisdiction of formation and of this state applicable to the governing of the internal affairs or to the liability of an owner, member, or managerial official. (TBCA 8.01.A (part), 8.05.A (part), 8.06.A; TLLCA 7.01.A (part), 7.05.A, 7.06.A; TNPCA 8.01.A (part), 8.04.A (part), 8.05.A; TPCA 19A; TRLPA 9.01(b), 9.02(a); TRPA 10.02(a) (part).)

Source Law

[TBCA 8.01]

A. . . . No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this

State any business which a corporation organized under this Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and

[TBCA 8.05]

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State; if the corporation is required to qualify under a name other than its corporate name, then the name under which the corporation is to be qualified.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is incorporated.

(7) The names and respective

addresses of the directors and officers of the corporation.

. . .

(11) A statement that consideration of the value of at least One Thousand Dollars (\$1,000) has been paid for the issuance of shares.

[TBCA 8.06]

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of the corporation's incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under the oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that the application conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File in his office the original and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the copy.

[TLLCA 7.01]

A. . . . No foreign limited liability company shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a limited liability company organized under this Act is not permitted to transact. A foreign limited liability company shall not be denied a certificate of authority by reason of the fact that the laws of the State or country under which such limited liability

company is organized governing its organization and internal affairs differ from the laws of this State

[TLLCA 7.05]

A. In order to procure a Certificate of Authority to transact business in this State, a foreign limited liability company shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the foreign limited liability company in the state or country under the laws of which it is organized.

(2) If the name of the limited liability company does not contain the word "Limited," "Ltd.," or "L.C." then the name of the foreign limited liability company with the word or abbreviation which it elects to add thereto for use in this state; if the foreign limited liability company is required to qualify under a name other than its foreign limited liability company name, then the name under which the foreign limited liability company is to be qualified.

(3) The date of organization and the period of duration of the foreign limited liability company.

(4) The address of the principal office of the foreign limited liability company in the state or country under the laws of which it is organized.

(5) The address of the registered office of the foreign limited liability company in this state, and the name of its registered agent in this state at such address.

(6) The purpose or purposes of the foreign limited liability company which it proposes to pursue in the transaction of business in this state and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is organized.

(7) The names and respective addresses of the managers of the foreign limited liability company.

[TLLCA 7.06]

A. The original and a copy of the application of the foreign limited liability company for a Certificate of Authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of the foreign limited liability company's organization evidencing its existence. If the certificate is in a language other than English, a translation of the certificate, under the oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that the application conforms to law, the Secretary of State shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and a copy the word "filed," and the month, day, and year of filing thereof.

(2) File in the office of the Secretary of State the original and a certificate evidencing the foreign limited liability company existence.

(3) Issue a Certificate of Authority to transact business in this state to which there shall be affixed the copy.

[TNPCA 8.01]

A. . . . No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this State any affairs which a corporation organized under the laws of this State is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State and

[TNPCA 8.04]

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application

therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated and, if the corporation is required to qualify under a name other than its corporate name, the name under which the corporation is to be qualified.

(2) A statement that the corporation is a non-profit corporation.

(3) The date of incorporation and the period of duration of the corporation.

(4) The street address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

. . .

[TNPCA 8.05]

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such documents the word "Filed," and the month, day and year of the filing thereof.

(2) File in his office the original application and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to conduct affairs in this State to which he shall affix the copy of the application.

[TPCA]

19A. (a) A foreign professional legal corporation may apply for a certificate of authority to perform professional legal service in this state by filing an application in accordance with the Texas Business Corporation Act. The Secretary of State may not issue the certificate unless the name of the corporation or the name the corporation elects in this state meets the requirements of Section 8 of this Act. The corporation may not exercise in this state powers other than the powers provided by Section 7 of this Act. A shareholder, director, officer, employee, or agent of the corporation who renders professional legal service in this state on behalf of the corporation must be licensed or otherwise authorized to render professional legal service in this state.

(b) A certificate may not be issued to a corporation under this section unless the application for such certificate of authority includes a statement that the jurisdiction in which the corporation is incorporated would permit reciprocal admission of such corporation if it were incorporated in this state.

[TRLPA 9.01]

(b) A foreign limited partnership may not be denied registration by reason of any difference between the laws of the state under which it is formed and the laws of Texas.

[TRLPA 9.02]

(a) Before transacting business in Texas, a foreign limited partnership must register by delivering to the secretary of state the filing fee and one original application for registration as a foreign limited partnership executed by a general partner and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The application must state:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in Texas;

(2) the state where it is formed, the date of its formation, and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the state of its formation;

(3) the nature of the business or purposes to be conducted or promoted in Texas;

(4) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 1.06 of this Act;

(5) that the secretary of state is appointed the agent of the foreign limited partnership for service of process under the circumstances set forth in Subsection (b) of Section 9.10 of this Act;

(6) the name, the mailing address, and the street address of the business or residence of each general partner; and

(7) the date on which the foreign limited partnership first transacted, or intends to transact, business in Texas.

[TRPA 10.02]

(a) Before transacting business in Texas, a foreign limited liability partnership must file with the secretary of state a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies

the requirements of the state under whose laws it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

. . .

(4) the street address of the partnership's chief executive office and, if different, the street address of any other office of the partnership in Texas;

(5) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 10.05;

. . .

(8) in brief, the partnership's business.

Revisor's Note

Currently, the requirements for registering or qualifying a foreign limited partnership, corporation, and limited liability company to transact business in this state vary under the different acts. Section 9.004 standardizes the procedures for foreign registration, eliminates the requirement for a foreign entity to submit a certificate evidencing existence, and substitutes an affirmative statement regarding existence similar to the existing provision in the Texas Revised Limited Partnership Act. The revised law omits the \$1,000 consideration requirement for corporations in the Texas Business Corporation Act and language from the Texas Professional Corporation Act concerning the reciprocity of admission of a professional corporation in its home state.

Revised Law

Sec. 9.005. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN FOR-PROFIT CORPORATION. In addition to the information required by Section 9.004, a foreign for-profit corporation's application for registration must state the:

(1) aggregate number of shares the for-profit corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and any series in a class;

(2) aggregate number of shares issued by the for-profit corporation, itemized by classes, par value of shares, shares without par value, and any series in a class; and

(3) amount of the stated capital of the for-profit corporation. (TBCA 8.05.A (part).)

Source Law

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

. . .

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 9.006. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN NONPROFIT CORPORATION. In addition to the information required by Section 9.004, a foreign nonprofit corporation's application for registration must state:

(1) the names and addresses of the nonprofit corporation's directors and officers;

(2) whether or not the nonprofit corporation has members; and

(3) any additional information as necessary or appropriate to enable the secretary of state to determine whether the nonprofit corporation is entitled to register to conduct affairs in this state. (TNPCA 8.04.A (part).)

Source Law

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which

application shall set forth:

. . .

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of whether or not the corporation has members.

(9) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 9.007. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIP. In addition to the information required by Section 9.004, a foreign limited liability partnership's application for registration must state:

(1) the federal tax identification number of the partnership;

(2) the date of initial registration as a limited liability partnership under the laws of the state of formation;

(3) the number of partners at the date of the statement; and

(4) that the secretary of state is appointed the agent of the partnership for service of process under the circumstances set forth by Section 5.251. (TRPA 10.02(a) (part).)

Source Law

(a) Before transacting business in Texas, a foreign limited liability partnership must file with the secretary of state a statement of foreign qualification. The statement must contain:

. . .

(2) the federal tax identification number of the partnership;

(3) . . . the date of initial registration as a limited liability partnership under the laws of the state of formation, and a statement that, as of the date of filing, the foreign limited liability partnership exists as a valid limited liability partnership under the laws of the

state of its formation;

. . .

(6) a statement that the secretary of state is appointed the agent of the foreign limited liability partnership for service of process under the circumstances set forth in Section 10.05(k);

(7) the number of partners at the date of the statement; and

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 9.008. EFFECT OF REGISTRATION. (a) The registration of a foreign entity is effective when the application filed under Chapter 4 takes effect. The registration remains in effect until the registration terminates, is withdrawn, or is revoked.

(b) Except in a proceeding to revoke the registration, the secretary of state's issuance of an acknowledgment that the entity has filed an application is conclusive evidence of the authority of the foreign filing entity to transact business in this state under the entity's name or under another name stated in the application, in accordance with Section 9.004(b)(1).

(TBCA 8.07; TLLCA 7.07; TNPCA 8.06; TRLPA 2.07(b).)

Source Law

[TBCA]

8.07.A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, and such certificate shall be conclusive evidence of such right of the corporation to transact business in this State for such purposes, except as against this State in a proceeding to revoke such certificate.

[TLLCA]

7.07.A. Upon the issuance of a Certificate of Authority by the Secretary of State, the foreign limited liability company shall be authorized to transact business in this State for those purposes set forth in its application, and such certificate shall be conclusive evidence of such right of the foreign limited liability company to transact

business in the State for such purposes, except as against this State, in proceeding to revoke such certificate.

[TNPCA]

8.06.A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to conduct affairs in this State for those purposes set forth in its application and the certificate shall be conclusive evidence of the right of the corporation to conduct affairs in this State for that purpose, except as against this State in a proceeding to revoke the certificate.

[TRLPA 2.07]

(b) Any document filed with the secretary of state under this Act is effective on filing with the secretary of state, except as permitted by Section 2.12.

Revisor's Note

The revised law defers to the standardized rules in Chapter 4 for when the registration takes effect and clarifies the source law by listing the three events that can terminate the registration.

Revised Law

Sec. 9.009. AMENDMENTS TO REGISTRATION. (a) A foreign filing entity must amend its registration to change its name or the business or activity stated in its application for registration if the name or business or activity has changed.

(b) A foreign filing entity may amend its application for registration by filing an application for amendment of registration in the manner required by Chapter 4.

(c) The application for amendment must be filed on or before the 91st day following the date of the change. (TBCA 8.13.A, B, D; TLLCA 7.08.A, B, D; TNPCA 8.12.A, B, D; TRLPA 9.05.)

Source Law

[TBCA 8.13]

A. If a foreign corporation authorized to transact business in this State shall change its corporate name, or if such corporation desires to pursue in this State purposes other than, or in addition to, those

authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. To change any statement on an original application for a certificate of authority a foreign corporation shall file with the Secretary of State an application for an amended certificate of authority setting forth the change.

. . .

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the application and a copy of it with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[TLLCA 7.08]

A. If a foreign limited liability company authorized to transact business in this State shall change its foreign limited liability company name, or if such foreign limited liability company desires to pursue in this State purposes other than, or in addition to, those authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. To change any statement on an original application for a certificate of authority a foreign limited liability company shall file with the Secretary of State an application for an amended certificate of authority setting forth the change.

. . .

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the application and a copy of it with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the

case of an original application for a certificate of authority.

[TNPCA 8.12]

A. If a foreign corporation authorized to conduct affairs in this State changes its corporate name or desires to pursue in this State purposes other than or in addition to the purposes authorized by its existing certificate of authority, the corporation shall file with the Secretary of State an application for amended certificate of authority setting forth the change.

B. A foreign corporation may change any other statement on its original application for certificate of authority or any amendment to that certificate by filing with the Secretary of State an application for an amended certificate of authority setting forth the change.

. . .

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[TRLPA]

9.05. If any statement in the application for registration of a foreign limited partnership was false when made or if any arrangements or other facts described in the application have changed, making the application false in any respect, the foreign limited partnership shall promptly pay the filing fee and file with the secretary of state a certificate executed by a general partner correcting the false statement.

Revisor's Note

Section 9.009 permits a foreign entity to change information in its original application by filing an amendment and requires the entity to file such an amendment

when the entity changes its name or its stated business or activity. An amendment to reflect the change of name or business or activity must be filed within 90 days following the change. The source law does not specify a time frame for filing the amendment.

Revised Law

Sec. 9.010. NAME CHANGE OF FOREIGN ENTITY. If a foreign entity authorized to conduct affairs in this state changes its name to a name that would cause the entity to be denied an application for registration under this subchapter, the entity's registration must be suspended. An entity the registration of which has been suspended under this section may conduct affairs in this state only after the entity:

(1) changes its name to a name that is available to it under the laws of this state; or

(2) otherwise complies with this chapter. (TBCA 8.04; TLLCA 7.04; TNPCA 8.03.B.)

Source Law

[TBCA]

8.04.A. Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this Act.

[TLLCA]

7.04.A. Whenever a foreign limited liability company which is authorized to transact business in this state shall change its name to one under which a Certificate of Authority would not be granted to it on application therefor, the Certificate of Authority of such foreign limited liability company shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the

provisions of this act.

[TNPCA 8.03]

B. When a foreign non-profit corporation that is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted to it on application for a certificate, the certificate of authority of the corporation is suspended, and after the suspension the corporation may not conduct any affairs in this State until it has changed its name to a name that is available to it under the laws of this State or until it has otherwise complied with this Act.

Revisor's Note

No substantive change is intended. Although a similar provision is not contained in the Texas Revised Limited Partnership Act for limited partnerships, Texas Revised Limited Partnership Act Sections 9.02(a)(1) and 1.03 both speak to the issue of a foreign limited partnership operating under an assumed name when the name is not available. Further, it is the practice of the Secretary of State to observe the same rule for limited partnerships as for corporations and limited liability companies based on the general premise that an entity cannot elect to do something by amendment that could not be done in the original filing.

Revised Law

Sec. 9.011. VOLUNTARY WITHDRAWAL OF REGISTRATION. (a) A foreign filing entity registered in this state may withdraw the entity's registration at any time by filing a certificate of withdrawal in the manner required by Chapter 4.

(b) A certificate of withdrawal must state:

- (1) the name of the foreign filing entity as registered in this state;
- (2) the type of entity and the entity's jurisdiction of formation;
- (3) the address of the principal office of the foreign filing entity;
- (4) that the foreign filing entity no longer is transacting business in this state;
- (5) that the foreign filing entity:
 - (A) revokes the authority of the entity's

registered agent in this state to accept service of process; and

(B) consents that service of process in any action, suit, or proceeding stating a cause of action arising in this state during the time the foreign filing entity was authorized to transact business in this state may be made on the foreign filing entity by serving the secretary of state;

(6) an address to which the secretary of state may mail a copy of any process against the foreign filing entity served on the secretary of state; and

(7) that any money due or accrued to the state has been paid or that adequate provision has been made for the payment of that money.

(c) A certificate from the comptroller that all franchise taxes have been paid must be filed with the certificate of withdrawal in accordance with Chapter 4 if the foreign filing entity is a foreign professional corporation, foreign for-profit corporation, or foreign limited liability company.

(d) If the existence or separate existence of a foreign filing entity registered in this state terminates because of dissolution, termination, merger, conversion, or other circumstances, a certificate by an authorized governmental official of the entity's jurisdiction of formation that evidences the termination shall be filed with the secretary of state.

(e) The registration of the foreign filing entity in this state terminates when a certificate of withdrawal under this section or a certificate evidencing termination under Subsection (d) is filed.

(f) If the address stated in a certificate of withdrawal under Subsection (b)(6) changes, the foreign filing entity must promptly amend the certificate of withdrawal to update the address.

(g) A certificate of withdrawal does not terminate the authority of the secretary of state to accept service of process on the foreign filing entity with respect to a cause of action arising out of business or activity in this state. (TBCA 8.14, 8.15; TLLCA 7.09, 7.10; TNPCA 8.13; TRLPA 9.06.)

Source Law

[TBCA]

8.14.A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not transacting business in this state;

(3) That the corporation surrenders its authority to transact business in this state;

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him; and

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof.

B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed on behalf of the corporation by an officer.

C. When the existence of a foreign corporation terminates because of dissolution, merger, conversion, or otherwise, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[TBCA]

8.15.A. The original and a copy of such application for withdrawal, along with a certificate from the comptroller that all taxes, including all applicable penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state. If the secretary of state finds that such

application conforms to the provisions of this Act, the secretary of state shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in the office of the secretary of state.

(3) Issue a certificate of withdrawal to which shall be affixed the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

[TLLCA]

7.09.A. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign limited liability company shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the foreign limited liability company and the state or country under the laws of which it is organized;

(2) That the foreign limited liability company is not transacting business in this state;

(3) That the foreign limited liability company surrenders its authority to transact business in this state;

(4) That the foreign limited liability company revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in

this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the foreign limited liability company that may be served on him;

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof;

(7) A statement that all known creditors or claimants have been paid or provided for and that the foreign limited liability company is not involved in or threatened with litigation in any court in this state.

B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed on behalf of the foreign limited liability company by an authorized manager or member.

C. When the existence of a foreign limited liability company terminates because of dissolution, merger, or otherwise, a certificate from the proper officer in the jurisdiction of the foreign limited liability company's organization evidencing the termination shall be filed with the Secretary of State.

[TLLCA]

7.10.A. The original and a copy of such application for withdrawal, along with a certificate from the comptroller that all taxes, including penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this Act, the secretary of state shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and

the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in the secretary of state's office.

(3) Issue a certificate of withdrawal to which there shall be affixed the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the foreign limited liability company or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign limited liability company to transact business in this State shall cease.

[TNPCA]

8.13.A. A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A street or post office address to which the Secretary of State may mail a copy of any process against the

corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid, or that adequate provision has been made for the payment thereof.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be signed on behalf of the corporation by an officer, or, if the corporation is in the hands of a receiver or trustee, it shall be signed on behalf of the corporation by such receiver or trustee.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or any other reason, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[TRLPA]

9.06. A foreign limited partnership may cancel its registration by paying the application fee and filing with the secretary of state a certificate of cancellation executed by a general partner, conforming to the requirements of Section 2.03 of this Act as if it were a domestic limited partnership. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in Texas.

Revisor's Note

Section 9.011 standardizes the requirements for the certificate of withdrawal for a foreign filing entity. Consistent with the withdrawal for a

for-profit corporation, the certificate of withdrawal will no longer require a statement that there is no suit pending or threatened against the corporation in this state. The revised law adds additional information for foreign limited partnerships to put in the certificate of withdrawal, as compared to the certificate of cancellation required by the Texas Revised Limited Partnership Act.

[Sections 9.012-9.050 reserved for expansion]

SUBCHAPTER B. FAILURE TO REGISTER

Revised Law

Sec. 9.051. TRANACTING BUSINESS OR MAINTAINING COURT PROCEEDING WITHOUT REGISTRATION. (a) On application by the attorney general, a court may enjoin a foreign filing entity or the entity's agent from transacting business in this state if:

- (1) the entity is not registered in this state; or
- (2) the entity's registration is obtained on the basis of a false or misleading representation.

(b) A foreign filing entity or the entity's legal representative may not maintain an action, suit, or proceeding in a court of this state, brought either directly by the entity or in the form of a derivative action in the entity's name, on a cause of action that arises out of the transaction of business in this state unless the foreign filing entity is registered in accordance with this chapter. This subsection does not affect the rights of an assignee of the foreign filing entity as:

- (1) the holder in due course of a negotiable instrument; or
- (2) the bona fide purchaser for value of a warehouse receipt, security, or other instrument made negotiable by law.

(c) The failure of a foreign filing entity to register does not:

- (1) affect the validity of any contract or act of the foreign filing entity;
- (2) prevent the entity from defending an action, suit, or proceeding in a court in this state; or
- (3) except as provided by Subsection (d), cause any owner, member, or managerial official of the foreign filing entity to become liable for the debts, obligations, or liabilities of the foreign filing entity.

(d) Subsection (c)(3) does not apply to a general partner of a foreign limited partnership. (TBCA 8.18.A, B; TLLCA 7.13.A, B; TNPCA 8.17; TRLPA 9.07(a), (b), (c), 9.08; TRPA 10.03.)

Source Law

[TBCA 8.18]

A. No foreign corporation which is

transacting, or has transacted, business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State (whether brought directly by the corporation or in the form of a derivative action by a shareholder) on any cause of action arising out of the transaction of business in this State, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding on any such cause of action be maintained in any court of this State by any successor, assignee, or legal representative of such foreign corporation, until a certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

[TLLCA 7.13]

A. No foreign limited liability company which is transacting, or has transacted, business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State (whether brought directly by the foreign limited liability company or in the form of a derivative action by a member) on any cause of action arising out of the transaction of business in this State, until such foreign limited liability company shall

have obtained a certificate of authority. Nor shall any action, suit, or proceeding on any such cause of action be maintained in any court of this State by a successor, assignee, or legal representative of such foreign limited liability company until a certificate of authority shall have been obtained by such foreign limited liability company or by a foreign limited liability company on which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this article shall not affect the rights of any assignee of the foreign limited liability company as the holder in due course of a negotiable promissory note, check or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such foreign limited liability company, shall not cause any member or manager of such foreign limited liability company to become liable for the debts, obligations, or liabilities of such foreign limited liability company, and shall not prevent such foreign limited liability company from defending any action, suit or proceeding in any court of this State.

[TNPCA]

8.17.A. No foreign corporation which is conducting affairs in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this State, until a certificate of authority shall have been obtained by such corporation or by a

corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check or bill of exchange, or as the bona-fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

[TRLPA 9.07]

(a) A foreign limited partnership transacting business in Texas may not maintain an action, suit, or proceeding in Texas until it has registered in Texas and paid to the secretary of state all amounts owing under Subsection (d) of this section.

(b) The failure of a foreign limited partnership to register in Texas does not impair:

(1) the validity of any contract or act of the foreign limited partnership;

(2) the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) defense by the foreign limited partnership of any action, suit, or proceeding in any Texas court.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely because the limited partnership transacted business in Texas without registration.

[TRLPA]

9.08. A court of competent jurisdiction may enjoin a foreign limited partnership or an agent of a foreign limited partnership

from transacting any business in Texas if the foreign limited partnership has failed to register under this article or if the foreign limited partnership has secured a certification of the secretary of state under Section 9.03 of this Act on the basis of false or misleading representations. The attorney general may proceed for this purpose by complaint in any county in which the unregistered foreign limited partnership is transacting or has transacted business.

[TRPA 10.03]

(a) A foreign limited liability partnership transacting business in Texas may not maintain an action, suit, or proceeding in Texas unless it has registered in Texas and paid to the secretary of state all amounts owing under Section 10.02.

(b) The failure of a foreign limited liability partnership to register in Texas does not impair:

(1) the validity of a contract or act of the foreign limited liability partnership;

(2) the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) defense by the foreign limited liability partnership of any action, suit, or proceeding in any Texas court.

(c) A partner of a foreign limited liability partnership is not liable for the debts and obligations of the foreign limited liability partnership solely because the limited liability partnership transacted business in Texas without registration.

Revisor's Note

No substantive change is intended. Section 9.051(c)(3) adds language indicating that an owner, member, or managerial official of the entity is not liable by contract or under other provisions of law for failure of the foreign entity to register. This language is derived from Article 7.13.B, Texas Limited Liability Company Act, Section 9.07(c), Texas Revised Limited Partnership

Act, and Section 10.03, Texas Revised Partnership Act and clarifies the law as it applies to corporations. This result is implicit in the Texas Business Corporation Act and Texas Non-Profit Corporation Act because they explicitly provide for penalties for failure to register but do not impose any liability on directors, officers, members, or shareholders.

Revised Law

Sec. 9.052. CIVIL PENALTY. (a) A foreign filing entity that transacts business in this state and is not registered under this chapter is liable to this state for a civil penalty in an amount equal to all:

(1) fees and taxes that would have been imposed by law on the entity had the entity registered when first required and filed all reports required by law; and

(2) penalties and interest imposed by law for failure to pay those fees and taxes.

(b) The attorney general may bring suit to recover amounts due to this state under this section. (TBCA 8.18.C (part); TLLCA 7.13.C (part); TRLPA 9.07(d) (part).)

Source Law

[TBCA 8.18]

C. A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. . . . The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section.

[TLLCA 7.13]

C. A foreign limited liability company which transacts business in this State without a certificate of authority shall be

liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by law upon such foreign limited liability company had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and taxes. . . . The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section.

[TRLPA 9.07]

(d) A foreign limited partnership transacting business in Texas without first having registered shall pay to the secretary of state an amount equal to the fee for registration that would have been imposed on the foreign limited partnership had it registered as required by Section 9.02 of this Act

Revisor's Note

Sections 9.052 and 9.054 set forth the civil and monetary penalties for transacting business without registering. Existing law provides for judicial imposition of a monetary penalty for foreign corporations and limited liability companies. Section 9.054 authorizes the secretary of state to collect late filing fees when an entity has transacted business in this state for more than 90 days without a certificate of authority. The late filing fee is equal to the registration fee for the entity for each year of delinquency. The code provision is modeled after a Texas Revised Limited Partnership Act provision and provides for the assessment of an administrative penalty by the secretary of state since there is no history of the judicial assessment of the penalties under the Texas Business Corporation Act or Texas Limited Liability Company Act.

Revised Law

Sec. 9.053. VENUE. In addition to any other venue authorized by law, a suit under Section 9.051 or 9.052 may be brought in Travis County. (New.)

Revisor's Note

Section 9.053 clarifies that venue for actions under Sections 9.051 and 9.052 is in Travis County, Texas. This provision is consistent with other existing law in connection with revocation of certificates of authority, as reflected in the revised law in Section 9.158. This provision clarifies a gap that might be deemed to exist in the source law.

Revised Law

Sec. 9.054. LATE FILING FEE. The secretary of state may collect from a foreign filing entity a late filing fee equal to the registration fee for the entity for each year of delinquency if the entity has transacted business in this state for more than 90 days. The secretary may condition the effectiveness of a registration on the payment of the late filing fee. (TBCA 8.18.C (part); TLLCA 7.13.C (part); TRLPA 9.07(d).)

Source Law

[TBCA 8.18]

C. . . . In addition to the penalties and payments thus prescribed, such corporation shall forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. . . .

[TLLCA 7.13]

C. . . . In addition to the penalties and payments thus prescribed, such foreign limited liability company shall forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. . . .

[TRLPA 9.07]

(d) A foreign limited partnership transacting business in Texas without first

having registered shall pay to the secretary of state an amount equal to the fee for registration that would have been imposed on the foreign limited partnership had it registered as required by Section 9.02 of this Act, plus \$750 for each year or part of a year during which it transacted business in Texas without having registered.

Revisor's Note

See the Revisor's Note to Section 9.052.

Revised Law

Sec. 9.055. REQUIREMENTS OF OTHER LAW. This chapter does not excuse a foreign entity from complying with duties imposed under other law, including other chapters of this code, relating to filing or registration requirements. (TBCA 8.02; TLLCA 7.02; TNPCA 8.02; TRLPA 9.01(c).)

Source Law

[TBCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors; provided, however, that only the laws of the jurisdiction of incorporation of a foreign corporation shall govern (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and shareholders and matters relating to its shares, and (2) the liability, if any, of

shareholders of the foreign corporation for the debts, liabilities, and obligations of the foreign corporation for which they are not otherwise liable by statute or agreement.

[TLLCA]

7.02.A. A foreign limited liability company which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic limited liability company organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its managers and members shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic limited liability company of like character and its managers and members; provided, however, that only the laws of the jurisdiction of organization of a foreign limited liability company shall govern (1) the internal affairs of the foreign limited liability company, including but not limited to the rights, powers, and duties of its manager and members and matters relating to its ownership, and (2) the liability, if any, of members of the foreign limited liability company for the debts, liabilities and obligations of the foreign limited liability company for which they are not otherwise liable by statute or agreement.

[TNPCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act, shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of

State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the conduct of intrastate affairs in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors; provided, however, that the laws of the jurisdiction of incorporation of a foreign corporation shall govern (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and members and matters relating to its membership, and (2) the liability, if any, of members of the foreign corporation for the debts, liabilities, and obligations of the foreign corporation for which they are not otherwise liable by statute or agreement.

[TRLPA 9.01]

(c) With respect to its activities in Texas, a foreign limited partnership is subject to Section 1.09 of this Act as if it were a domestic limited partnership.

Revisor's Note

No substantive change is intended. Although the revised law has no direct counterpart in existing law, the revised law makes explicit what is implicit in the source laws. The revised law negates any possible interpretation that the adoption of Chapter 9 somehow negates or supersedes other state laws, other than the laws specifically repealed in connection with the adoption of the Code.

[Sections 9.056-9.100 reserved for expansion]

SUBCHAPTER C. REVOCATION OF REGISTRATION BY SECRETARY OF STATE

Revised Law

Sec. 9.101. REVOCATION OF REGISTRATION BY SECRETARY OF STATE. (a) If it appears to the secretary of state that, with

respect to a foreign filing entity, a circumstance described by Subsection (b) exists, the secretary of state may notify the entity of the circumstance by mail or certified mail addressed to the foreign filing entity at the entity's registered office or principal place of business as shown on the records of the secretary of state.

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

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

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

(3) amend its registration when required by law; or

(4) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment. (TBCA 8.16.B, C(1); TLLCA 7.11.B, C(1); TNPCA 8.15.B, C(1); TRLPA 13.06(a), (b); TRPA 10.02(i).)

Source Law

[TBCA 8.16]

B. The certificate of authority of a foreign corporation to transact business in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

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

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

(3) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority or the initial

franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign corporation shall have its certificate of authority to transact business in this state revoked under Subsection (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees, penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

[TLLCA 7.11]

B. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

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

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

(3) The foreign limited liability company has changed its name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the foreign limited liability company has changed its foreign limited liability company name and that the newly adopted name is not available for use in this state; or

(4) The foreign limited liability

company has failed to pay the filing fee for the foreign limited liability company certificate of authority or any required tax deposit, or the fee or any tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign limited liability company shall have its certificate of authority to transact business in this state revoked under Subsection (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees, penalties is required to be made, gives the foreign limited liability company not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its managers, or to any other known place of business of said foreign limited liability company, and the foreign limited liability company has failed prior to such revocation to correct the neglect, omission or delinquency.

[TNPCA 8.15]

B. The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

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

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

(3) The corporation has changed its corporate name or the purposes authorized by its existing certificate of authority and has failed to file with the Secretary of State within thirty days after such change became effective, an application for an amended certificate of authority, or that the

corporation has changed its corporate name and that the newly adopted name is not available for use in this State; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority, or the fee was paid by an instrument that was dishonored when presented by this State for payment.

C. (1) No foreign corporation shall have its certificate of authority to conduct affairs in this state revoked under Subsections (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

[TRLPA 13.06]

(a) A domestic or foreign limited partnership that fails to file a report required under Section 1305 of this Act when due forfeits its right to transact business in this state.

(b) A forfeiture under this section takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation that the right to transact business has been forfeited together with the date of forfeiture. Notice of the forfeiture shall be mailed to the limited partnership at:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership; or

(3) any other place of business of the limited partnership.

[TRPA 10.02]

(i) The secretary of state may revoke the filing of a document filed under this section if the secretary of state determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the state for payment. The secretary of state shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not affect an earlier filing.

Revisor's Note

The procedures contained in Subchapters C and D relating to revocation of registration by court action or action of the secretary of state are consistent with those located in the Texas Business Corporation Act, Texas Limited Liability Company Act, and Texas Non-Profit Corporation Act but are made applicable to all foreign filing entities for sake of consistency. The primary foreign filing entities affected by this change are foreign limited partnerships and foreign limited liability partnerships. For other entities, such as real estate investment trusts, cooperative associations, and professional corporations, the existing governing laws already incorporate the rules set forth in the Texas Business Corporation Act or Texas Non-Profit Corporation Act and, therefore, are not similarly affected by these Code provisions.

Section 9.101 permits the secretary of state to revoke the registration of a foreign entity under specified circumstances after notice and an opportunity to correct the entity's failure. Those circumstances are consistent with those found in the Texas Business Corporation Act, Texas Limited Liability Company Act, and Texas Non-Profit Corporation Act. In addition, under the the current provisions of Section 405.033, Government Code, the Secretary of State has authority to revoke the filing of any document by a foreign filing entity if the fee for the document was not paid or was paid

by an instrument that was dishonored when presented for payment. A similar power exists specifically in the Texas Revised Partnership Act for foreign limited liability partnerships. Further, the qualification of a foreign limited partnership can be revoked under Texas Revised Limited Partnership Act Section 13.06 for failure to file required reports. References to revocation because of failure to pay franchise taxes were removed since the former tax deposit requirement was repealed and forfeitures for failure to pay franchise taxes are primarily governed by and effected under the Tax Code.

Revised Law

Sec. 9.102. CERTIFICATE OF REVOCATION. (a) If revocation of a registration is required, the secretary of state shall:

- (1) file a certificate of revocation; and
- (2) deliver a certificate of revocation by regular or certified mail to the foreign filing entity at its registered office or principal place of business.

(b) The certificate of revocation must state:

- (1) that the foreign filing entity's registration has been revoked; and
- (2) the date and cause of the revocation.

(c) Except as otherwise provided by this chapter, the revocation of a foreign filing entity's registration under this subchapter takes effect on the date the certificate of revocation is filed. (TBCA 8.16.D; TLLCA 7.11.D; TNPCA 8.15.D.)

Source Law

[TBCA 8.16]

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

said corporation. Upon the issuance of such certificate of revocation, the authority to transact business in this state shall cease.

[TLLCA 7.11]

D. Whenever a foreign limited liability company has given cause for revocation of its certificate of authority and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon revoke the certificate of authority of the foreign limited liability company by issuing a certificate of revocation which shall include the fact of such revocation and the date and cause thereof. The original of such certificate shall be placed in the Secretary of State's office and a copy thereof mailed to the foreign limited liability company at its registered office or to its principal place of business, or to the last known address of one of its managers, or to any other known place of business of said foreign limited liability company. Upon the issuance of such certificate of revocation, the authority to transact business in this state shall cease.

[TNPCA 8.15]

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

Revisor's Note

Except as stated in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.103. REINSTATEMENT BY SECRETARY OF STATE AFTER REVOCATION. (a) The secretary of state shall reinstate the registration of an entity that has been revoked under this subchapter if the entity files an application for reinstatement in accordance with Section 9.104, accompanied by each amendment to the entity's registration that is required by intervening events, including circumstances requiring an amendment to the name of the entity or the name under which the entity is registered to transact business in this state as described in Section 9.105, and:

(1) the entity has corrected the circumstances that led to the revocation and any other circumstances that may exist of the types described by Section 9.101(b), including the payment of fees, interest, or penalties; or

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

(b) If a foreign filing entity's registration is reinstated before the third anniversary of the revocation, the entity is considered to have been registered or in existence at all times during the period of revocation. (TBCA 8.16.E (part); TLLCA 7.11.E (part); TNPCA 8.15.E (part).)

Source Law

[TBCA 8.16]

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such revocation, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to the Secretary's satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount

equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. . . .

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

[TLLCA 7.11]

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

When the application for reinstatement is approved and filed by the Secretary of State, the foreign limited liability company's authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the manager or member, or agents of the

foreign limited liability company during the period between revocation and reinstatement.

[TNPCA 8.15]

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

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

Revisor's Note

Except as stated in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended. The 36-month restriction on reinstatement of a revoked registration in the source law is found in Section 9.104.

Revised Law

Sec. 9.104. PROCEDURES FOR REINSTATEMENT. (a) A foreign filing entity, to have its registration reinstated, must complete the requirements of this section not later than the third

anniversary of the date the revocation of the entity's registration took effect.

(b) The foreign filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

(c) The certificate of reinstatement must contain:

- (1) the name of the foreign filing entity;
- (2) the filing number assigned by the filing officer to the entity;
- (3) the effective date of the revocation of the entity's registration; and
- (4) the name of the entity's registered agent and the address of the entity's registered office.

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

(e) The registration of a foreign filing entity may not be reinstated under this section if the termination occurred as a result of:

- (1) an order of a court; or
- (2) forfeiture under the Tax Code. (TBCA 8.16.E (part)); TLLCA 7.11.E (part); TNPCA 8.15.E (part).)

Source Law

[TBCA 8.16]

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such revocation, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to the Secretary's satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's

certificate not been revoked. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

. . .

[TLLCA 7.11]

E. Any foreign limited liability company whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of revocation, upon approval of an application for reinstatement signed by a manager or member of the foreign limited liability company. Such application shall be filed by the Secretary of State whenever it is established to the Secretary of State's satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the foreign limited liability company certificate not been revoked. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

. . .

[TNPCA 8.15]

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in

revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of \$25.00 shall accompany the application for reinstatement.

. . .

Revisor's Note

Except as discussed in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended. Unlike the source law, the revised law specifies the contents of the certificate of reinstatement, which are not specified in the source law. Under the provisions of the Texas Business Corporation Act, the Secretary of State has promulgated a form for an application of reinstatement. The contents specified by revised Section 9.104(c) parallel this promulgated form.

The revised law also clarifies that a letter of eligibility from the comptroller is required for reinstatement. This requirement parallels existing practice of the Secretary of State. The source law requires the Secretary of State to be satisfied that any tax delinquency has been cured. The letter of eligibility from the comptroller is the written evidence that satisfies the Secretary of State that the tax delinquency has been cured.

Revised Law

Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. If the secretary of state determines that a foreign filing entity's name or the name under which it is registered to transact business in this state is the same as, deceptively similar to, or similar to a name of a filing entity or foreign filing entity as provided by or reserved or registered under this code, the secretary of state may not accept for filing the certificate of reinstatement unless the foreign filing entity amends its registration to change its name or obtains consent for the use of the similar name. (TBCA 8.16.E (part); TLLCA 7.11.E (part); TNPCA 8.15.E (part); TRLPA 13.09(b) (part).)

Source Law

[TBCA 8.16]

E. . . .

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate, limited partnership, or limited liability company name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

. . .

[TLLCA 7.11]

E. . . .

Reinstatement shall not be authorized if the foreign limited liability company name is the same as or deceptively similar to a foreign limited liability company, corporation or limited partnership name already on file or reserved or registered, unless the foreign limited liability company being reinstated contemporaneously amends its certificate of authority to change its name.

. . .

[TNPCA 8.15]

E. . . .

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

. . .

[TRLPA 13.09]

(b) . . . If the name of the limited partnership is not available at the time of reinstatement, the secretary shall require the limited partnership to file an amendment to its certificate or application to adopt an assumed name for use in this state as a precondition to reinstatement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 9.106. REINSTATEMENT OF REGISTRATION FOLLOWING TAX FORFEITURE. A foreign filing entity whose registration has been revoked under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its registration. (Op. Tex. Att'y Gen. No. M-600 (1970).)

Source Law

Texas Attorney General Opinion M-600
(March 25, 1970).

Revisor's Note

Section 9.106 specifies that a foreign filing entity must follow the Tax Code procedures in order to reinstate its registration after revocation under the Tax Code. This provision is a clarifying change from existing law. Previously repealed Article 12.17 of the Texas Business Corporation Act contained the predecessor to the current Tax Code provisions for tax forfeitures. The attorney general's opinion cited as the source law provided that the reinstatement provisions of Part 7 of the Texas Business Corporation Act and Texas Non-Profit Corporation Act did not apply to tax forfeitures under old Texas Business Corporation Act Article 12.17.

[Sections 9.107-9.150 reserved for expansion]

SUBCHAPTER D. JUDICIAL REVOCATION OF REGISTRATION

Revised Law

Sec. 9.151. REVOCATION OF REGISTRATION BY COURT ACTION. (a) A court may revoke the registration of a foreign filing entity if, as a result of an action brought under Section 9.153, the court finds that one or more of the following problems exist:

- (1) the entity did not comply with a condition precedent to the issuance of the entity's registration or an amendment to the registration;
- (2) the entity's registration or any amendment to the entity's registration was fraudulently filed;
- (3) a misrepresentation of a material matter was made in an application, report, affidavit, or other document the entity submitted under this code;
- (4) the entity has continued to transact business beyond the scope of the purpose or purposes expressed in the entity's registration; or

(5) public interest requires revocation because:

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

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

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

(b) Sections 9.152-9.157 do not apply to Subsection (a)(5).
(TBCA 8.16.A, F, G; TLLCA 7.11.A, F; TNPCA 8.15.A, F, G.)

Source Law

[TBCA 8.16]

A. The certificate of authority of a foreign corporation to transact business in this state may be revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes expressed in its certificate of authority to transact business in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

. . .

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to transact business in this State in a district

court of the county in which the registered office of the foreign corporation in this State is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

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

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

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

[TLLCA 7.11]

A. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by a decree of the district court for the county in which the registered office of the foreign limited liability company in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The foreign limited liability company has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The foreign limited liability company has continued to transact business beyond the scope of the purpose or purposes expressed in its certificate of authority to transact business in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such foreign limited liability company as required by law.

. . .

F. When a foreign limited liability company is convicted of a felony, or when a

high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign limited liability company, the Attorney General may file an action to revoke the certificate of authority of the foreign limited liability company to transact business in this State in a district court of the county in which the registered office of the foreign limited liability company in this State is situated or in a district court of Travis County. The court may revoke the foreign limited liability company's certificate of authority if it is established that:

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

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

[TNPCA 8.15]

A. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to conduct affairs beyond the scope of the purpose or purposes expressed in its certificate of authority to conduct affairs in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other

document submitted by such corporation as required by law.

. . .

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to conduct affairs in this state in a district court of the county in which the registered office of the foreign corporation in this state is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

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

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

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.152. NOTIFICATION OF CAUSE BY SECRETARY OF STATE.

(a) The secretary of state shall provide to the attorney general:

(1) the name of a foreign filing entity that has given cause under Section 9.151 for revocation of its registration; and

(2) the facts relating to the cause for revocation.

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

(c) A court shall accept a certificate issued by the secretary of state as to the facts relating to the cause for judicial revocation of a foreign filing entity's registration and

the sending of a notice under Subsection (b) as prima facie evidence of the facts stated in the certificate and the sending of the notice. (TBCA 7.02.A, B; TNPCA 7.02.A, B; TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

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

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

[TNPCA 7.02]

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

B. Whenever the Secretary of State

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

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.153. FILING OF ACTION BY ATTORNEY GENERAL. The attorney general shall file an action against a foreign filing entity in the name of the state seeking the revocation of the entity's registration if:

(1) the entity has not cured the problems for which revocation is sought before the 31st day after the date the notice under Section 9.152(b) is mailed; and

(2) the attorney general determines that cause exists for judicial revocation of the entity's registration under Section 9.151. (TBCA 7.02.C; TNPCA 7.02.C; TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

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

may be.

[TNPCA 7.02]

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

[TLLCA 8.12]

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

Revisor's Note

Except as discussed in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.154. CURE BEFORE FINAL JUDGMENT. An action filed by the attorney general under Section 9.153 shall be abated if, before a district court renders judgment on the action, the foreign filing entity:

(1) cures the problems for which revocation is sought;
and

(2) pays the costs of the action. (TBCA 7.02.D; TNPCA 7.02.D; TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

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

action shall abate.

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.155. JUDGMENT REQUIRING REVOCATION. If a district court finds in an action brought under this subchapter that proper grounds exist under Section 9.151(a) for revocation of the foreign filing entity's registration, the court shall:

- (1) make findings to that effect; and
- (2) subject to Section 9.156, enter a judgment not earlier than the fifth day after the date the court makes its findings. (TBCA 7.02.E (part); TNPCA 7.02.E (part); TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall without rendering or entering any

judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. . . .

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.156. STAY OF JUDGMENT. (a) If, in an action brought under this subchapter, a foreign filing entity has proved by a preponderance of the evidence and obtained a finding that the problems for which the foreign filing entity has been found guilty were not wilful or the result of a failure to take reasonable precautions, the entity may make a sworn application to the court for a stay of entry of the judgment to allow the foreign filing entity a reasonable opportunity to cure the problems for which it has been found guilty. An application made under this subsection must be made not later than the fifth day after the date the court makes its findings under Section 9.155.

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

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

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

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

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

(e) If a court finds that a foreign filing entity has not cured the problems for which revocation is sought within the

period prescribed by Subsection (c), the court shall enter final judgment requiring revocation of the foreign filing entity's registration. (TBCA 7.02.E (part); TNPCA 7.02.E (part); TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

E. . . . If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been

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

[TLLCA 8.12]

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

Revisor's Note

No substantive change is intended. The revised law clarifies the existing law's statement that an entity must "promptly" make a sworn application to a court and now gives an entity five days after the court makes its findings to take such action. This five-day period parallels the five-day period provided

in Section 9.155. Section 9.155 prohibits the court from entering a judgment for at least five days after making its findings.

Revised Law

Sec. 9.157. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a trial court's findings against a foreign filing entity under this subchapter shall remand the case to the trial court with instructions to grant the foreign filing entity an opportunity to cure the problems for which the entity has been found guilty if:

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

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

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

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

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

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

(d) If a foreign filing entity has not cured the problems for which revocation is sought within the period prescribed by the appellate court under Subsection (b), the judgment requiring revocation shall become final. (TBCA 7.02.F; TNPCA 7.02.F; TLLCA 8.12.A (part).)

Source Law

[TBCA 7.02]

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation

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

[TNPCA 7.02]

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

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.158. JURISDICTION AND VENUE. (a) The attorney general shall bring an action for the revocation of the registration of a foreign filing entity under this subchapter in:

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

(2) a district court of Travis County.

(b) A district court described by Subsection (a) has jurisdiction of the action for revocation of the registration of the foreign filing entity. (TBCA 7.03 (part); TNPCA 7.03 (part); TLLCA 8.12.A (part).)

Source Law

[TBCA]

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

[TNPCA]

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

[TLLCA 8.12]

A. Subject to Section C of this Article, . . . Part Seven of the TBCA apply

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended. The revised law clarifies that the court described in the section has jurisdiction over the action for revocation. This jurisdiction was implied in the source law.

Revised Law

Sec. 9.159. PROCESS IN STATE ACTION. Citation in an action for the involuntary revocation of a foreign filing entity's registration under this subchapter shall be issued and served as provided by law. (TBCA 7.03 (part); TNPCA 7.03 (part); TLLCA 8.12.A (part).)

Source Law

[TBCA]

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

[TNPCA]

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

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.160. PUBLICATION OF NOTICE. (a) If process in an action under this subchapter is returned not found, the attorney general shall publish notice in a newspaper in the county in which the registered office of the foreign filing entity in this state is located. The notice must contain:

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

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

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

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

(e) Unless a foreign filing entity has been served with citation, a default judgment may not be taken against the entity before the 31st day after the date the notice is first published. (TBCA 7.03 (part); TNPCA 7.03 (part); TLLCA 8.12.A (part).)

Source Law

[TBCA]

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

first publication of such notice.

[TNPCA]

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

[TLLCA 8.12]

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

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

Revised Law

Sec. 9.161. FILING OF DECREE OF REVOCATION AGAINST FOREIGN FILING ENTITY. (a) The clerk of a court that enters a decree revoking the registration of a foreign filing entity shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section. (TBCA 8.17; TLLCA 7.12; TNPCA 8.16.)

Source Law

[TBCA]

8.17.A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to transact business in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[TLLCA]

7.12.A. In case a court shall enter a decree revoking the certificate of authority of a foreign limited liability company to transact business in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[TNPCA]

8.16.A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to conduct affairs in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

Revisor's Note

Except as described in the first paragraph of the Revisor's Note to Section 9.101, no substantive change is intended.

[Sections 9.162-9.200 reserved for expansion]

SUBCHAPTER E. BUSINESS, RIGHTS, AND OBLIGATIONS

Revised Law

Sec. 9.201. BUSINESS OF FOREIGN ENTITY. A foreign entity may not conduct in this state a business or activity that is not permitted by this code to be transacted by the domestic entity to which it most closely corresponds, unless other law of this state authorizes the entity to conduct the business or activity. (TBCA 8.01.A (part); TLLCA 7.01.A (part); TNPCA 8.01.A (part).)

Source Law

[TBCA 8.01]

A. . . . No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a corporation organized under this Act is not permitted to transact. . . .

[TLLCA 7.01]

A. . . . No foreign limited liability company shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a limited liability company organized under this Act is not permitted to transact. . . .

[TNPCA 8.01]

A. . . . No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this State any affairs which a corporation organized under the laws of this State is not permitted to conduct. . . .

Revisor's Note

No substantive change is intended. The "unless . . ." clause in the revised law clarifies the effects of other Texas laws on the rule set forth in this section.

Revised Law

Sec. 9.202. RIGHTS AND PRIVILEGES. A foreign nonfiling entity or a foreign filing entity registered under this chapter enjoys the same but no greater rights and privileges as the domestic entity to which it most closely corresponds. (TBCA 8.02 (part); TLLCA 7.02 (part); TNPCA 8.02 (part); TRLPA 9.01(c).)

Source Law

[TBCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the

same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and

[TLLCA]

7.02.A. A foreign limited liability company which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic limited liability company organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and

[TNPCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act, shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and

[TRLPA 9.01]

(c) With respect to its activities in Texas, a foreign limited partnership is subject to Section 1.09 of this Act as if it were a domestic limited partnership.

Revisor's Note

No substantive change is intended. Sections 9.202 and 9.203 of the revised law apply to general partnerships and other foreign nonfiling entities. Similar

provisions are not contained, but are implicit, in the provisions of the Texas Revised Partnership Act. The substance of such revised law may also be derived from U.S. constitutional law.

The phrase "to which it most closely corresponds" is used in Subchapter E to ensure that foreign corporations, limited liability companies, limited partnerships, or other types of foreign entities are treated under Texas law as, respectively, a corporation, limited liability company, limited partnership, or other same type of entity and not as another type of entity. This requirement was implicit in the source law and in practice has been applied by the Secretary of State.

Revised Law

Sec. 9.203. OBLIGATIONS AND LIABILITIES. Subject to this code and other laws of this state and except as provided by Subchapter C, Chapter 1, in any matter that affects the transaction of intrastate business in this state, a foreign entity and each member, owner, or managerial official of the entity is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic entity to which it most closely corresponds or on a member, owner, or managerial official of that domestic entity. (TBCA 8.02 (part); TLLCA 7.02 (part); TNPCA 8.02 (part).)

Source Law

[TBCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act . . . as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors

[TLLCA]

7.02.A. A foreign limited liability company which shall have received a certificate of authority under this Act . . . as to all matters affecting the transaction of intrastate business in this State, it and

its managers and members shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic limited liability company of like character and its managers and members

[TNPCA]

8.02.A. A foreign corporation which shall have received a certificate of authority under this Act . . . as to all matters affecting the conduct of intrastate affairs in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors

Revisor's Note

No substantive change is intended. See the Revisor's Note to Section 9.202. The revised law omits the qualification in the source law as to receipt of a certificate of authority. In most cases, a foreign filing entity transacting intrastate business in Texas will be required to register to transact business. Negligent or intentional failure to register should not excuse a foreign filing entity from its duties under existing Texas law or the Code.

Revised Law

Sec. 9.204. RIGHT OF FOREIGN FILING ENTITY TO PARTICIPATE IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. A vote cast or consent provided by a foreign filing entity with respect to its ownership or membership interest in a domestic entity of which the foreign filing entity is a lawful owner or member, and the foreign filing entity's participation in the management and control of the business and affairs of the domestic entity to the extent of the participation of other owners or members, are not invalidated if the foreign filing entity does not register to transact business in this state, subject to all law governing a domestic entity, including the antitrust law of this state. (TBCA 2.29.E; TREITA 13.10(F).)

Source Law

[TBCA 2.29]

E. Shares standing in the name of

another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine; provided, however, that when any foreign corporation without a permit to do business in this State lawfully owns or may lawfully own or acquire stock in Texas corporation, it shall not be unlawful for such foreign corporation to vote said stock and participate in the management and control of the business and affairs of such Texas corporation, as other stockholders, subject to all laws, rules and regulations governing Texas corporations and especially subject to the provisions of the Anti-Trust laws of the State of Texas.

[TREITA 13.10]

(F) Shares standing in the name of another real estate investment trust or corporation, domestic or foreign, may be voted by an officer, agent, or proxy that is authorized to vote those shares by the bylaws of the real estate investment trust or corporation or, in the absence of such authorization, by an officer, agent, or proxy as determined by the trust managers or board of directors of the real estate investment trust or corporation. When any foreign real estate investment trust or corporation without a permit to do business in this state lawfully owns or may lawfully own or acquire stock in a Texas real estate investment trust, the foreign real estate investment trust or corporation may vote that stock and participate in the management and control of the business and affairs of the Texas real estate investment trust, as other shareholders, subject to all laws and rules governing real estate investment trusts in this state, including especially the provisions of the antitrust laws of this state.

Revisor's Note

No substantive change is intended,

except that the revised law clarifies an ambiguity found in Section 13.10(F), Texas Real Estate Investment Trust Act, and Article 2.29.E, Texas Business Corporation Act. The new language specifies that a foreign filing entity has a right to vote its ownership or membership interest in a domestic entity and to participate in management of the domestic entity even if not registered to transact business in Texas. However, the language leaves to other sections, primarily Section 9.251, whether these activities rise to the level of transacting business in this state. Article 2.29.E, Texas Business Corporation Act, and Section 13.10(F), Texas Real Estate Investment Trust Act, are not clear in this respect.

The source law has no parallel in the Texas Non-Profit Corporation Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, or Texas Revised Partnership Act, but the authority to vote interests and participate in management and control can be inferred from the powers provisions in the source law for Code Section 9.202 and in the provisions of the Texas Revised Partnership Act.

[Sections 9.205-9.250 reserved for expansion]

SUBCHAPTER F. DETERMINATION OF TRANSACTING BUSINESS IN
THIS STATE
Revised Law

Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS IN THIS STATE. For purposes of this chapter, activities that do not constitute transaction of business in this state include:

(1) maintaining or defending an action or suit or an administrative or arbitration proceeding, or effecting the settlement of:

(A) such an action, suit, or proceeding; or
(B) a claim or dispute to which the entity is a party;

(2) holding a meeting of the entity's managerial officials, owners, or members or carrying on another activity concerning the entity's internal affairs;

(3) maintaining a bank account;

(4) maintaining an office or agency for:

(A) transferring, exchanging, or registering securities the entity issues; or

(B) appointing or maintaining a trustee or depository related to the entity's securities;

(5) voting the interest of an entity the foreign entity has acquired;

(6) effecting a sale through an independent contractor;

(7) creating, as borrower or lender, or acquiring indebtedness or a mortgage or other security interest in real or personal property;

(8) securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;

(9) transacting business in interstate commerce;

(10) conducting an isolated transaction that:

(A) is completed within a period of 30 days; and

(B) is not in the course of a number of repeated, similar transactions;

(11) in a case that does not involve an activity that would constitute the transaction of business in this state if the activity were one of a foreign entity acting in its own right:

(A) exercising a power of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a court of this state; or

(B) exercising a power of a trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of this state, or by one or more foreign entities;

(12) regarding a debt secured by a mortgage or lien on real or personal property in this state:

(A) acquiring the debt in a transaction outside this state or in interstate commerce;

(B) collecting or adjusting a principal or interest payment on the debt;

(C) enforcing or adjusting a right or property securing the debt;

(D) taking an action necessary to preserve and protect the interest of the mortgagee in the security; or

(E) engaging in any combination of transactions described by this subdivision;

(13) investing in or acquiring, in a transaction outside of this state, a royalty or other nonoperating mineral interest; or

(14) the execution of a division order, contract of sale, or other instrument incidental to ownership of a nonoperating mineral interest. (TBCA 8.01.B; TLLCA 7.01.B; TNPCA 8.01.B; TRLPA 9.02(b); TRPA 10.04.)

Source Law

B. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this Act, by reason of carrying on in this state any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceedings, or effecting the settlement thereof or the settlement of claims or disputes to which it is a party;

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

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Voting the stock of any corporation which it has lawfully acquired;

(6) Effecting sales through independent contractors;

(7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(8) Securing or collecting debts due to it or enforcing any rights in property securing the same;

(9) Transacting any business in interstate commerce;

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature;

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this state, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by one or more non-residents of this state, or by one or more foreign

corporations, if the exercise of such powers, in any such case, will not involve activities which would be deemed to constitute the transacting of business in this state in the case of a foreign corporation acting in its own right;

(12) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combination of such transactions;

(13) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

[TLLCA 7.01]

B. Without excluding other activities which may not constitute transaction of business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for the purposes of this Act, by reason of carrying on in this state any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceedings, or effecting the settlement thereof or the settlement of claims or disputes to which it is a party;

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

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Voting the stock or other

equity interest of any person;

(6) Effecting sales through independent contractors;

(7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property;

(8) Securing or collecting debts due to it or enforcing any rights in property securing the same;

(9) Transacting any business in interstate commerce;

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature;

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this state, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by one or more non-residents of this state, or by one or more foreign limited liability companies if the exercise of such powers, in any such case, will not involve activities which would be deemed to constitute the transacting of business in this state in the case of a foreign limited liability company acting in its own right;

(12) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combination of such transactions;

(13) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

[TNPCA 8.01]

B. Without excluding other activities which may not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this Act, by reason of carrying on in this State any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administration or arbitration proceedings, or affecting the settlement thereof or the settlement of claims or disputes to which it is a party.

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

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Voting the stock of any corporation which it has lawfully acquired.

(6) Effecting sales through independent contractors.

(7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(8) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(9) Conducting any affairs in interstate commerce.

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this State, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by a person, corporation or association, non-resident of this State, if

the exercise of such powers in such case will not involve activities which would be deemed to constitute the transacting of business in this State in the case of a foreign corporation acting in its own right.

(12) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combinations of such transactions.

(13) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

[TRLPA 9.02]

(b) Without excluding other activities that do not constitute transacting business in Texas, a foreign limited partnership is not considered to be transacting business in Texas for purposes of this Act because it carries on in Texas any one or more of the following activities:

(1) maintaining or defending any action, suit, or administrative or arbitration proceeding, effecting the settlement of the action, suit, or proceeding, or settling claims or disputes to which it is a party;

(2) holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of partnership interests issued by it, or appointing or maintaining trustees or depositories with relation to ownership interests in it;

(5) effecting sales through

independent contractors;

(6) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(7) securing or collecting debts due to it or enforcing rights in property securing those debts;

(8) transacting any business in interstate commerce;

(9) conducting an isolated transaction completed within 30 days of the date of initiation of the transaction and not in the course of a number of repeated similar transactions;

(10) exercising the powers of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a Texas court, or exercising the powers of the trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of Texas or by one or more foreign corporations or limited partnerships, if the exercise of those powers in any of these cases will not involve activities that would be considered to constitute the transacting of business in Texas in the case of a foreign corporation or foreign limited partnership acting in its own right;

(11) acquiring, in transactions outside Texas or in interstate commerce, debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting principal and interest payments on those debts, enforcing or adjusting rights in property securing those debts, taking any actions necessary to preserve and protect the interest of the mortgagee in that security, or a combination of these transactions; or

(12) investing in or acquiring, in transactions outside Texas, royalties and other nonoperating mineral interests, and the execution of division orders, contracts of sale, and other instruments incidental to the ownership of nonoperating mineral interests.

Without excluding other activities that do not constitute transacting business in Texas, a foreign limited liability partnership is not considered to be transacting business in Texas for purposes of this Act because it carries on in Texas any one or more of the following activities:

(1) maintaining or defending any action, suit, or administrative or arbitration proceeding, effecting settlement of the action, suit, or proceeding, or settling claims or disputes to which it is a party;

(2) holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of partnership interests issued by it or appointing or maintaining trustees or depositories with relation to ownership interests in it;

(5) effecting sales through independent contractors;

(6) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(7) securing or collecting debts due to it or enforcing rights in property securing such debts;

(8) transacting business in interstate commerce;

(9) conducting an isolated transaction completed within 30 days of the date of initiation of the transaction and not in the course of a number of repeated similar transactions;

(10) exercising the powers of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a Texas court, or exercising the powers of trustee under the will of a nonresident decedent, or under a trust created by one or more foreign corporations or limited partnerships, if the exercise of those powers in any of these cases will not

involve activities that would be considered to constitute the transacting of business in Texas in the case of a foreign corporation or foreign limited partnership acting in its own right;

(11) acquiring, in transactions outside Texas or in interstate commerce, debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting principal and interest payments on those debts, enforcing or adjusting principal and interest payments on those debts, enforcing or adjusting rights in property securing those debts, taking any actions necessary to preserve and protect the interest of the mortgagee in that security, or a combination of these transactions; or

(12) investing in or acquiring, in transactions outside Texas, royalties and other nonoperating mineral interests, and the execution of division orders, contracts of sale, and other instruments incidental to the ownership of nonoperating mineral interests.

Revisor's Note

No substantive change is intended. The reference to "voting the stock" in the Texas Business Corporation Act, Texas Limited Liability Company Act, and Texas Non-Profit Corporation Act is not contained in Texas Revised Limited Partnership Act and Texas Revised Partnership Act provisions because the latter statutes focus on partnerships and not corporations. Such omission in such source laws was not intended to imply that partnerships have no power to vote any stock that they own.

Revised Law

Sec. 9.252. OTHER ACTIVITIES. The list provided by Section 9.251 is not exclusive of activities that do not constitute transacting business in this state for the purposes of this code. (TBCA 8.01.B (part); TLLCA 7.01.B (part); TNPCA 8.01.B (part); TRLPA 9.02(b) (part); TRPA 10.04 (part).)

Source Law

[TBCA 8.01]

B. Without excluding other activities which may not constitute transacting business

in this state

[TLLCA 7.01]

B. Without excluding other activities which may not constitute transaction of business in this state

[TNPCA 8.01]

B. Without excluding other activities which may not constitute conducting affairs in this State

[TRLPA 9.02]

(b) Without excluding other activities that do not constitute transacting business in Texas

[TRPA 10.04]

Without excluding other activities that do not constitute transacting business in Texas,

Revisor's Note

No substantive change is intended.

[Sections 9.253-9.300 reserved for expansion]

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 9.301. APPLICABILITY OF CODE TO CERTAIN FOREIGN ENTITIES. (a) Except as provided by a statute described by this subsection, the provisions of this code governing a foreign entity apply to a foreign entity registered or granted authority to transact business in this state under:

(1) a special statute that does not contain a provision regarding a matter provided for by this code with respect to a foreign entity; or

(2) another statute that specifically provides that the general law for the granting of a registration or certificate of authority to the foreign entity to transact business in this state supplements the special statute.

(b) Except as provided by a special statute described by Subsection (a), a document required to be filed with the secretary of state under the special statute must be signed and filed in accordance with Chapter 4. (TBCA 9.14.A; TMLCA 1.03; TNPCA 10.04.A.)

Source Law

[TBCA 9.14]

A. This Act does not apply to domestic

corporations organized under any statute other than this Act or to any foreign corporations granted authority to transact business within this State under any statute other than this Act; provided, however, that if any domestic corporation was heretofore or is hereafter organized under or is governed by a statute other than this Act or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) that contains no provisions in regard to some of the matters provided for in this Act, or any foreign corporation was heretofore or is hereafter granted authority to transact business within this State under a statute other than this Act or the Texas Non-Profit Corporation Act that contains no provisions in regard to some of the matters provided for in this Act in respect of foreign corporations, or if such a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to transact business in this State, as the case may be, shall supplement the provisions of such statute, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such other statute; provided further, however, that this Act shall not apply to any domestic corporation organized under or governed by the Texas Non-Profit Corporation Act or any foreign corporation granted authority to transact business within this State under the Texas Non-Profit Corporation Act.

[TMCLA 1.03]

A. All corporations shall, to the extent not inconsistent with any special statute pertaining to a particular corporation, be governed

(1) by the Texas Business Corporation Act, as amended, if organized for profit, and

(2) by the Texas Non-Profit Corporation Act, as amended, if organized not for profit.

B. Except to the extent that any

provisions of this Act are expressly made inapplicable by any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, or any special Statute of this State pertaining to a particular type of corporation, this Act shall govern (1) all domestic corporations, including without limitation those corporations heretofore or hereafter organized under any Statute of the State, and (2) only to the extent expressly provided in this Act, all foreign corporations, including without limitation those corporations heretofore or hereafter granted a permit to do business under any Statute of the State.

[TNCPA 10.04]

A. Except as otherwise provided by this article, this Act does not apply to domestic corporations organized under any statute other than this Act or to any foreign corporations granted authority to conduct affairs within this State under any statute other than this Act. If any domestic corporation is organized under or is governed by a statute that does not contain a provision regarding a matter provided for in this Act, or any foreign corporation is granted authority to conduct affairs within this State under a statute that does not contain a provision regarding a matter provided for in this Act in respect of foreign corporations, or if a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to conduct affairs in this State supplement the provisions of that statute, the provisions of this Act apply only to the extent not inconsistent with the provisions of the other statute.

Revisor's Note

The revised law clarifies that all foreign entities registered or granted authority to do business in this state under a statute other than the code are covered by this code to the extent a matter is not governed by such statute. The source law is

limited to corporations and those types of entities, such as cooperative associations or real estate investment trusts, that incorporate the Texas Business Corporation Act or the Texas Non-Profit Corporation Act by reference. The revised law extends to other types of entities this concept that the Code supplements, but does not supersede, other Texas laws with respect to foreign entities doing business in this state.

CHAPTER 10. MERGERS, INTEREST EXCHANGES, CONVERSIONS,
AND SALES OF ASSETS
SUBCHAPTER A. MERGERS

Revised Law

Sec. 10.001. ADOPTION OF PLAN OF MERGER. (a) A domestic entity may effect a merger by complying with the applicable provisions of this code. A merger must be set forth in a plan of merger.

(b) To effect a merger, each domestic entity that is a party to the merger must act on and approve the plan of merger in the manner prescribed by this code for the approval of mergers by the domestic entity.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If one or more non-code organizations is a party to the merger or is to be created by the plan of merger:

(1) to effect the merger each non-code organization must take all action required by this code and its governing documents;

(2) the merger must be permitted by:

(A) the law of the state or country under whose law each non-code organization is incorporated or organized; or

(B) the governing documents of each non-code organization if the documents are not inconsistent with the law under which the non-code organization is incorporated or organized; and

(3) in effecting the merger each non-code organization that is a party to the merger must comply with:

(A) the applicable laws under which it is incorporated or organized; and

(B) the governing documents of the non-code organization.

(e) A domestic entity may not merge under this subchapter if an owner or member of that entity that is a party to the merger will, as a result of the merger, become personally liable, without that owner's or member's consent, for a liability or other obligation of any other person. (TBCA 5.01.A, 5.03.A; TLLCA 10.01; TNPCA 5.01.A, 5.02.A, 5.07.A; TREITA 23.10(A); TRLPA

2.11(a) (part); TRPA 9.02(a) (part).)

Source Law

[TBCA 5.01]

A. A domestic corporation may adopt a plan of merger and one or more domestic corporations may merge with one or more domestic or foreign corporations or other entities if:

(1) the board of directors of each domestic corporation that is a party to the plan of merger acts upon and its shareholders (if required by Article 5.03 of this Act) approve the plan of merger in the manner prescribed in Article 5.03 of this Act;

(2) if one or more foreign corporations or other entities is a party to the merger or is to be created by the terms of the plan of merger, (a) the merger is permitted by the laws of the state or country under whose law each foreign corporation, if any, that is a party to the merger is incorporated, (b) the merger is either permitted by the laws under which each other entity that is a party to the merger is incorporated or organized or by the constituent documents of the other entity that are not inconsistent with such laws, and (c) each foreign corporation or other entity that is a party to the merger complies with such laws or documents in effecting the merger; and

(3) no shareholder of a domestic corporation that is a party to the merger will, as a result of such merger, become personally liable, without his consent, for the liabilities or obligations of any other person or entity.

[TBCA 5.03]

A. Except as provided by Sections G and H of this Article, after acting on a plan of merger or exchange in the manner prescribed by Subsection (1) of Section B of this Article, the board of directors of each domestic corporation that is a party to the merger, and the board of directors of each domestic corporation whose shares are to be

acquired in the share exchange, shall submit the plan of merger or exchange for approval by its shareholders. Unless the articles of incorporation otherwise require, no approval by shareholders of a plan of merger is required under this Article for any corporation that is a party to the plan of merger unless that corporation is also a party to the merger.

[TLLCA]

10.01.A. A domestic limited liability company may adopt a plan of merger and one or more domestic limited liability companies may merge with one or more domestic or foreign limited liability companies or other entities if:

(1) each constituent entity enters into a written plan of merger containing the provisions set forth in Article 10.02 of this Act for which:

(a) approval exists by all domestic limited liability companies by the vote of a majority of their respective members, unless the respective regulations or articles of organization of each limited liability company provide otherwise; and

(b) if one or more foreign limited liability companies or other entities is a party to the merger or is to be created by the terms of the plan of merger:

(i) the merger is permitted by the laws under which each foreign limited liability company and each other entity that is a party to the merger is formed or organized or by the organizational documents or other constituent documents of the foreign limited liability company or other entity that are not inconsistent with those laws; and

(ii) each foreign limited liability company or other entity that is a party to the merger complies with those laws or documents in effecting the merger; and

(2) a member of a domestic limited liability company that is a party to the merger, as a result of the merger, will not

become personally liable for the liabilities or obligations of any other person unless the member consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the domestic limited liability company.

[TNPCA 5.01]

A. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

[TNPCA 5.02]

A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

[TNPCA 5.07]

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated, if such merger or consolidation is permitted by the laws of the State under which each such foreign corporation is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation. In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

[TREITA 23.10]

(A) A domestic real estate investment trust may adopt a plan of merger, and one or more domestic real estate investment trusts may merge with one or more domestic or foreign corporations, real estate investment trusts, partnerships, or other entities if:

(1) the trust managers of each domestic real estate investment trust that is a party to the plan of merger act on, and its shareholders, if required by Section 23.30 of this Act, approve, the plan of merger in the

manner prescribed in Section 23.30 of this Act;

(2)(i) the merger is permitted by the laws of the state or country under whose law each corporation, if any, that is a party to the merger is incorporated, (ii) the merger is either permitted by the laws under which each other entity that is a party to the merger is organized or by the constituent documents of the other entity that are not inconsistent with those laws, and (iii) each domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the merger complies with those laws or documents in effecting the merger, if one or more domestic or foreign corporations, real estate investment trusts, partnerships, or other entities is a party to the merger or is to be created by the terms of the plan of merger; and

(3) no shareholder of a domestic real estate investment trust that is a party to the merger will, as a result of the merger, become personally liable, without the shareholder's consent, for the liabilities or obligations of any other person or entity.

[TRLPA 2.11]

(a) A domestic limited partnership may adopt a plan of merger and one or more domestic limited partnerships may merge with one or more domestic or foreign limited partnerships or other entities if:

. . .

(3) if one or more foreign limited partnerships or other entities is a party to the merger or is to be created by the terms of the plan of merger, (i) the merger is permitted either by the laws under which each foreign limited partnership and each other entity that is a party to the merger is formed or organized or by the partnership agreement or other constituent documents of the foreign limited partnership or other entity that are not inconsistent with such laws, and (ii) each foreign limited partnership or other entity that is a party to the merger complies with such laws or

documents in effecting the merger; and

(4) no limited partner of a domestic limited partnership that is a party to the merger will, as a result of such merger, become personally liable for the liabilities or obligations of any other person or entity unless such limited partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by such domestic limited partnership.

[TRPA 9.02]

(a) Adoption of Plan. A domestic partnership may adopt a plan of merger and one or more domestic partnerships may merge with one or more domestic or foreign partnerships or other entities if:

. . .

(3) one or more foreign partnerships or other entities is a party to the merger or is to be created by the terms of the plan of merger:

(A) the merger is permitted either by the laws under which each foreign partnership and each other entity that is a party to the merger is formed or organized or by the partnership agreement or other constituent documents of the foreign partnership or other entity that are not inconsistent with those laws; and

(B) each foreign partnership or other entity that is a party to the merger complies with those laws or documents in effecting the merger.

Revisor's Note

Since revisions effected in the 1997 Texas Legislature, the provisions of the Texas Revised Partnership Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, Texas Real Estate Investment Trust Act, and Texas Business Corporation Act relating to mergers, interest exchanges, and conversions have been comparable in most respects. The provisions of Chapter 10 are based on these provisions. The provisions of the Texas Non-Profit Corporation Act are

based on past provisions of the Texas Business Corporation Act but have not been updated to parallel the provisions of these other statutes. Thus, although Chapter 10 may represent a substantive change from existing law for nonprofit corporations, and cooperative associations, whose governing statute incorporates the Texas Non-Profit Corporation Act by reference, this conforming change is considered necessary as part of the codification process. The use of a single chapter in the code for the merger, interest exchange, and conversion provisions harmonizes the laws applicable to all entities and clarifies the interrelationships among the various statutes governing these activities. Accordingly, these Revisor's Notes do not repeat a description of the foregoing change in each section of the revised law affected thereby. The key restrictions from the Texas Non-Profit Corporation Act are preserved in Section 10.010.

The Texas Non-Profit Corporation Act permitted "consolidations" of nonprofit corporations. The more modern provisions of the Texas Business Corporation Act and other statutes described above had abandoned that term and folded the concept of consolidation of entities into the term "merger." The revised law follows the more modern provisions and abandons the separate "consolidation" term.

By virtue of Section 252.017, this chapter does not apply to unincorporated nonprofit associations.

Other than as described above, no substantive change is intended in this section of the revised law.

Revised Law

Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A plan of merger must include:

- (1) the name of each organization that is a party to the merger;
- (2) the name of each organization that will survive the merger;
- (3) the name of each new organization that is to be created by the plan of merger;

(4) a description of the organizational form of each organization that is a party to the merger or that is to be created by the plan of merger and its jurisdiction of formation;

(5) the manner and basis of converting any of the ownership or membership interests of each organization that is a party to the merger into:

(A) ownership interests, membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations;

(B) cash;

(C) other property, including ownership interests, membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of the items described by Paragraphs (A)-(C);

(6) the certificate of formation of each new domestic filing entity to be created by the plan of merger;

(7) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(8) the governing documents of each non-code organization that:

(A) is to survive the merger or to be created by the plan of merger; and

(B) is an entity that is not:

(i) organized under the laws of any state or the United States; or

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

(b) An item required by Subsections (a)(6)-(8) may be included in the plan of merger by an attachment or exhibit to the plan.

(c) If the plan of merger provides for a manner and basis of converting an ownership or membership interest that may be converted in a manner or basis different than any other ownership or membership interest of the same class or series of the ownership or membership interest, the manner and basis of conversion must be included in the plan of merger in the same manner as provided by Subsection (a)(5). (TBCA 5.01.B (part); TLLCA 10.02.A (part); TNPCA 5.01.B (part), 5.02.B (part); TREITA 23.10(B) (part); TRLPA 2.11(b) (part); TRPA 9.02(b) (part).)

Source Law

[TBCA 5.01]

B. A plan of merger shall set forth:

(1) the name of each domestic or foreign corporation or other entity that is a party to the merger and the name of each

domestic or foreign corporation or other entity, if any, that shall survive the merger, which may be one or more of the domestic or foreign corporations or other entities party to the merger, and the name of each new domestic or foreign corporation or other entity, if any, that may be created by the terms of the plan of merger;

. . .

(3) the manner and basis of converting any of the shares or other evidences of ownership of each domestic or foreign corporation and other entity that is a party to the merger into shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic or foreign corporations or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or into any combination of the foregoing, and if any shares or other evidences of ownership of any holder of a class or series of shares or other evidence of ownership is to be converted in a manner or basis different than any other holder of shares of such class or series or other evidence of ownership, the manner and basis applicable to such holder;

(4) as an exhibit or attachment, the articles of incorporation of any new domestic corporation to be created by the terms of the plan of merger; and

(5) the articles of incorporation or other organizational documents of each other entity that is a party to the merger and that is to survive the merger or is to be created by the terms of the plan of merger.

[TLLCA 10.02]

A. A plan of merger must include:

(1) the name and state of domicile of each domestic or foreign limited liability company or other entity that is a party to the merger;

(2) the name of each domestic or foreign limited liability company or other

entity, if any, that will survive the merger, which may be one or more of the domestic or foreign limited companies or other entities party to the merger;

(3) the name and state of domicile of each new domestic or foreign limited liability company or other entity, if any, that may be created by the terms of the plan of merger;

. . . .

(5) the manner and basis of converting any of the limited liability company interests or other evidences of ownership of each domestic or foreign limited liability company or other entity that is a party to the merger into:

(a) limited liability company interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign limited liability company or other entities;

(b) cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity; or

(c) any combination of the items described in Subdivisions (a) and (b) of this Subsection;

(6) the articles of organization of any new domestic limited liability company to be created by the terms of the plan of merger; and

(7) the articles of organization or other organizational documents of each other entity that is a party to the merger and that is to be created by the terms of the plan of merger.

[TNPCA 5.01]

B. Each corporation shall adopt a plan of merger setting forth:

(1) The name of the corporation proposing to merge.

(2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving

corporation.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger.

. . .

[TNPCA 5.02]

B. Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate.

(2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(3) The terms and conditions of the proposed consolidation.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.

. . .

[TREITA 23.10]

(B) A plan of merger shall set forth:

(1) the name of each domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the merger and the name of each domestic or foreign corporation, real estate investment trust, partnership, or other entity, if any, that shall survive the merger, which may be one or more of the domestic or foreign corporations, real estate investment trusts, partnerships, or other entities that are parties to the merger, and the name of each new domestic or foreign corporation, real estate investment trust, partnership, or other entity, if any, that may be created by the terms of the plan of merger;

. . .

(3) the manner and basis of converting any of the shares or other evidence of ownership of each domestic or

foreign corporation, real estate investment trust, partnership, and other entity that is a party to the merger into shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, or other entities into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into any combination of the foregoing; and

(4) the declaration of trust, articles of incorporation, partnership agreement, or other organizational documents of each real estate investment trust, corporation, partnership, or other entity that is a party to the merger and that is to survive the merger or is to be created by the terms of the plan of merger.

[TRLPA 2.11]

(b) A plan of merger must set forth:

(1) the name and state of domicile of each domestic or foreign limited partnership or other entity that is a party to the merger and the name of each domestic or foreign limited partnership or other entity, if any, that shall survive the merger, which may be one or more of the domestic or foreign limited partnerships or other entities party to the merger, and the name and state of domicile of each new domestic or foreign limited partnership or other entity, if any, that may be created by the terms of the plan of merger;

. . .

(3) the manner and basis of converting any of the partnership interests or other evidences of ownership of each domestic or foreign limited partnership and other entity that is a party to the merger into partnership interests, shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic

or foreign limited partnerships or other entities, into cash or other property including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity or into any combination of the foregoing;

(4) as an exhibit or attachment, the certificate of limited partnership of any new domestic limited partnership to be created by the terms of the plan of merger; and

(5) the certificate of limited partnership or other organizational documents of each other entity that is a party to the merger and that is to be created by the terms of the plan of merger.

[TRPA 9.02]

(b) Contents of Plan. A plan of merger must set forth:

(1) the name and state of formation of each domestic or foreign partnership or other entity that is a party to the merger and the name of each domestic or foreign partnership or other entity, if any, that shall survive the merger, which may be one or more of the domestic or foreign partnerships or other entities party to the merger, and the name and state of domicile or formation of each new domestic or foreign partnership or other entity, if any, that may be created by the terms of the plan of merger;

. . .

(3) the manner and basis of converting any of the partnership interests or other evidences of ownership of each domestic or foreign partnership and other entity that is a party to the merger into partnership interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign partnerships or other entities, into cash or other property including shares, obligations, evidences of ownership, rights to purchase securities, or other securities

of any person or entity or into any combination of the foregoing; and

(4) as an exhibit or attachment, the organizational documents of each partnership or other entity that is a party to the merger and that is to be created by the terms of the plan of merger.

Revisor's Note

Section 10.002 clarifies the source law in one respect. Although implied in the source law, the source law did not clearly specify that the plan of merger must contain a description of the organizational form of each organization that is a party to the merger or to be created by the plan of merger.

Subsection (c) of the revised law also follows the more detailed provisions of Texas Business Corporation Act Article 5.01.B(3), which were amended in 1997, that clarify a plan of merger can treat differently ownership or membership interests in the same class or series.

Subsection (a)(8) omits the need to attach the governing documents of certain non-code organizations that survive or are created by a merger unless the organization is not required to file its certificate of formation or similar document with the applicable governmental authority under which the organization is organized. Existing law requires the governing documents of each surviving or newly created organization that is party to a merger to be attached to the plan of merger. This change conforms Texas law to Delaware law governing mergers.

The source law refers to "evidences of ownership," which is replaced by the term "ownership interests" in the revised law in a nonsubstantive change.

Revised Law

Sec. 10.003. CONTENTS OF PLAN OF MERGER: MORE THAN ONE SUCCESSOR. If more than one organization is to survive or to be created by the plan of merger, the plan of merger must include:

(1) the manner and basis of allocating and vesting the property of each organization that is a party to the merger among one or more of the surviving or new organizations;

(2) the name of each surviving or new organization that is primarily obligated for the payment of the fair value of an ownership or membership interest of an owner or member of a domestic entity subject to dissenters' rights that is a party to the merger and who complies with the requirements for dissent and appraisal under this code applicable to the domestic entity; and

(3) the manner and basis of allocating each liability and obligation of each organization that is a party to the merger, or adequate provisions for the payment and discharge of each liability and obligation, among one or more of the surviving or new organizations. (TBCA 5.01.B (part); TLLCA 10.02.A (part); TREITA 23.10(B) (part); TRLPA 2.11(b) (part); TRPA 9.02(b) (part).)

Source Law

[TBCA 5.01]

B. A plan of merger shall set forth:

. . .

(2) the terms and conditions of the merger including, if more than one domestic or foreign corporation or other entity is to survive or to be created by the terms of the plan of merger, (a) the manner and basis of allocating and vesting the real estate and other property of each domestic or foreign corporation and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign corporations and other entities, (b) the name of the surviving or new domestic or foreign corporation or other entity that is to be obligated for the payment of the fair value of any shares held by a shareholder of any domestic corporation that is a party to the merger who has complied with the requirements of Article 5.12 of this Act for the recovery of the fair value of his shares, and (c) the manner and basis of allocating all other liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger (or making adequate provision for the payment and discharge thereof) among one or more of the surviving or new domestic or foreign corporations and other entities;

. . .

[TLLCA 10.02]

A. A plan of merger must include:

. . .

(4) the terms and conditions of the merger, including, if more than one domestic or foreign limited liability company or other entity is to survive or to be created by the terms of the plan of merger, the manner and basis of allocating and vesting:

(a) real estate and other property of each domestic or foreign limited liability company and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign limited liability companies and other entities; and

(b) all liabilities and obligations of each domestic or foreign limited liability company and other entity that is a party to the merger among one or more of the surviving or new domestic or foreign limited liability companies and other entities or making adequate provision for the payment and discharge of the liabilities and obligations;

. . .

[TREITA 23.10]

(B) A plan of merger shall set forth:

. . .

(2) the terms and conditions of the merger including the following, if more than one domestic or foreign corporation, real estate investment trust, partnership, or other entity is to survive or to be created by the terms of the plan of merger:

(a) the manner and basis of allocating and vesting the real estate and other property of each domestic or foreign real estate investment trust and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, and other entities;

(b) the name of the surviving or new domestic or foreign corporation, real estate investment trust, partnership, or

other entity that is to be obligated for the payment of the fair value of any shares held by a shareholder of any domestic real estate investment trust that is a party to the merger who has complied with the requirements of Section 25.20 of this Act; and

(c) the manner and basis of allocating all other liabilities and obligations of each domestic or foreign corporation, real estate investment trust, partnership, and other entity that is a party to the merger, or adequate provision for the payment and discharge thereof, among one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, and other entities;

. . .

[TRLPA 2.11]

(b) A plan of merger must set forth:

. . .

(2) the terms and conditions of the merger including, if more than one domestic or foreign limited partnership or other entity is to survive or to be created by the terms of the plan of merger, (i) the manner and basis of allocating and vesting the real estate and other property of each domestic or foreign limited partnership and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign limited partnerships and other entities, and (ii) the manner and basis of allocating all liabilities and obligations of each domestic or foreign limited partnership and other entity that is a party to the merger (or making adequate provision for the payment and discharge thereof) among one or more of the surviving or new domestic or foreign limited partnerships and other entities;

. . .

[TRPA 9.02]

(b) Contents of Plan. A plan of merger must set forth:

. . .

(2) the terms and conditions of

the merger including, if more than one domestic or foreign partnership or other entity is to survive or to be created by the terms of the plan of merger:

(A) the manner and basis of allocating and vesting the real estate and other property of each domestic or foreign partnership and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign partnerships and other entities; and

(B) the manner and basis of allocating all liabilities and obligations of each domestic or foreign partnership and other entity that is a party to the merger (or making adequate provisions for the payment and discharge thereof) among one or more of the surviving or new domestic or foreign partnerships and other entities;

. . .

Revisor's Note

Subdivision (2) of the revised law is based on a Texas Business Corporation Act provision which clarified that the obligation to make the payment of funds to dissenters in mergers where there is more than one surviving organization could be allocated by the plan of merger. The revised law requires all surviving organizations to be responsible for the payment of amounts under the code to any dissenting owner who perfects that owner's rights of dissent and appraisal. The Texas Business Corporation Act allows the obligation to be allocated to only one entity. As a matter of policy, all surviving organizations should be responsible for the payment, with one organization being designated as the organization primarily responsible.

Revised Law

Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan of merger may include:

- (1) amendments to the governing documents of any surviving organization;
- (2) provisions relating to an interest exchange, including a plan of exchange; and
- (3) any other provisions relating to the merger that

are not required by this chapter. (TBCA 5.01.C; TLLCA 10.02.B; TNPCA 5.01.B (part), 5.02.B (part); TREITA 23.10(C); TRLPA 2.11(c); TRPA 9.02(c).)

Source Law

[TBCA 5.01]

- C. The plan of merger may set forth:
- (1) any amendments to the articles of incorporation of any surviving corporation;
 - (2) provisions relating to a share exchange; and
 - (3) any other provisions relating to the merger.

[TLLCA 10.02]

- B. The plan of merger may include:
- (1) any amendments to the articles of organization or regulations of any surviving domestic limited liability company or to the organizational documents or other constituent documents of any other surviving entity; and
 - (2) any other provision relating to the merger.

[TNPCA 5.01]

- B. Each corporation shall adopt a plan of merger setting forth:
- . . .
- (5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[TNPCA 5.02]

- B. Each corporation shall adopt a plan of consolidation setting forth:
- . . .
- (5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[TREITA 23.10]

- (C) The plan of merger may set forth:
- (1) any amendments to the organizational documents of any surviving entity;
 - (2) provisions relating to a share

exchange; and

(3) any other provisions relating to the merger.

[TRLPA 2.11]

(c) The plan of merger may set forth:

(1) any amendments to the certificate of limited partnership of any surviving domestic limited partnership; and

(2) any other provisions relating to the merger.

[TRPA 9.02]

(c) Optional Provisions. The plan of merger may state:

(1) any amendments to the partnership agreement of any surviving domestic partnership; and

(2) any other provisions relating to the merger.

Revisor's Note

No substantive change is intended. The revised law permits in plans of merger provisions relating to interest exchanges based on Texas Real Estate Investment Trust Act and Texas Business Corporation Act provisions. This result can be implied in the other source laws.

Revised Law

Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) In this section:

(1) "Direct or indirect wholly owned subsidiary" means, with respect to a domestic entity, another domestic entity, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or by one or more other domestic entities or non-code organizations, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or one or more other wholly owned domestic entities or non-code organizations.

(2) "Holding company" means a domestic entity that, from its organization until a merger takes effect, was at all times a direct or indirect wholly owned subsidiary of the domestic entity and the ownership or membership interests of which are issued in the merger.

(b) A domestic entity may, without owner approval and pursuant to a plan of merger, restructure the ownership structure

of that entity to create a holding company structure under this chapter and the provisions of this code under which the entity was formed. The approval of the owners or members of a domestic entity of a plan of merger that creates a holding company is not required if:

(1) approval is not otherwise required by the governing documents of the domestic entity;

(2) the domestic entity merges with a direct or indirect domestic wholly owned entity;

(3) after the merger the domestic entity or its successor is a direct or indirect wholly owned entity of a holding company;

(4) the domestic entity and the direct or indirect wholly owned entity are the only parties to the merger;

(5) each ownership or membership interest of the domestic entity that is outstanding preceding the merger is converted in the merger into an ownership or membership interest of the holding company having the same designations, preferences, limitations, and relative rights as the ownership or membership interest held by the owner or member in the domestic entity;

(6) the holding company is a domestic entity of the same organizational form as the merging domestic entity;

(7) except as provided by Subsections (c) and (d), the initial governing documents of the holding company contain provisions identical to the governing documents of the domestic entity preceding the merger;

(8) except as provided by Subsections (c) and (d), the initial governing documents of the surviving entity contain provisions identical to the governing documents of the domestic entity preceding the merger;

(9) the governing persons of the domestic entity become or remain the governing persons of the holding company when the merger takes effect;

(10) the owners or members of the domestic entity will not recognize gain or loss for United States federal income tax purposes or any other tax benefit or attribute as determined by the governing authority of the domestic entity; and

(11) the governing authority of the domestic entity adopts a resolution approving the plan of merger.

(c) Subsections (b)(7) and (8) do not require identical provisions regarding the incorporator or incorporators, the entity name, the registered office and agent, the initial governing persons, and the initial subscribers of ownership interests and provisions contained in any amendment to the certificate as are necessary to effect a change, exchange, reclassification, or cancellation of ownership or membership interests, if the change, exchange, reclassification, or cancellation was in effect preceding the merger.

(d) Notwithstanding Subsection (b)(8):

(1) the governing documents of the surviving entity must require that an act or transaction by or involving the surviving entity that requires for its approval under this code the approval of the owners or members of the merging domestic entity must, by specific reference to this section, require the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code and the governing documents of the surviving entity; and

(2) the governing documents of the surviving entity may change the classes and series of ownership or membership interests and the number of ownership or membership interests that the surviving entity is authorized to issue.

(e) To the extent the provisions contained in Section 21.606 apply to a domestic entity and its owners or members when a merger takes effect under this section, those provisions continue to apply to the holding company and its owners or members immediately after the merger takes effect as though the holding company were the domestic entity. All ownership or membership interests of the holding company acquired in the merger, for purposes of Section 21.606, are considered to have been acquired at the time the ownership or membership interest of the domestic entity converted in the merger was acquired. Any owner or member who, preceding the merger, was not an affiliated owner or member as described by Section 21.606 does not solely by reason of the merger become an affiliated owner or member of the holding company.

(f) If the name of a holding company immediately following the effectiveness of a merger under this section is the same as the name of the domestic entity preceding the merger, the ownership or membership interests of the holding company into which the ownership or membership interests of the domestic entity are merged are represented by the certificates, if any, that previously represented the ownership or membership interests in the domestic entity.

(g) This section shall not apply to partnerships. (TBCA 5.03.H, I (part), J, K.)

Source Law

H. Unless the articles of incorporation otherwise require, approval by the shareholders of a corporation of a plan of merger shall not be required and Sections A, B, C, D, E, and F of this Article do not apply if:

(1) the merger is a merger of the corporation with or into a direct or indirect wholly owned subsidiary of the corporation

and after the merger the corporation or its successor is a direct or indirect wholly owned subsidiary of a holding company;

(2) the corporation and the direct or indirect wholly owned subsidiary of the corporation are the only parties to the merger;

(3) each share or a fraction of a share of stock of the corporation outstanding immediately prior to the effectiveness of the merger is converted in the merger into a share or fraction of share of capital stock of the holding company having the same designations, preferences, limitations, and relative rights as a share of stock of the corporation being converted in the merger;

(4) the holding company and the corporation are domestic corporations;

(5) the articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and such provisions contained in any amendment to the certificate as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective);

(6) the articles of incorporation and bylaws of the surviving corporation immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and such provisions

contained in any amendment to the certificate as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective); provided, however, that:

(a) the articles of incorporation of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving a surviving corporation that requires for its approval under this Act or the corporation's articles of incorporation the approval of shareholders of the surviving corporation shall, by specific reference to this section, require the approval of the shareholders of the holding company (or any successor by merger) by the same vote as is required by this Act and the articles of incorporation of the surviving corporation; and

(b) the articles of incorporation of the surviving corporation may be amended in the merger to change the classes and series of shares and the number of shares that the surviving corporation is authorized to issue;

(7) the directors of the corporation become or remain directors of the holding company on the effective time of the merger;

(8) the shareholders of the corporation will not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the corporation; and

(9) the board of directors of the corporation adopts a resolution approving the plan of merger.

I. As used in this Article:

(1) "Direct or indirect wholly owned subsidiary" means, with respect to any corporation, another corporation, all of the outstanding voting stock of which is owned by the corporation or by one or more other domestic or foreign corporations or other entities, all of the outstanding voting stock or interests of which is owned by the

corporation or one or more of such other wholly owned domestic or foreign corporations or other entities.

(2) "Holding company" means a corporation which, from its incorporation until the effectiveness of a merger pursuant to Section H of this Article, was at all times a direct or indirect wholly owned subsidiary of the corporation and whose stock is issued in the merger permitted by Section H of this Article.

. . .

J. To the extent the provisions contained in Part Thirteen of this Act apply to the corporation and its shareholders at the effective time of a merger pursuant to Section H of this Article, those provisions shall continue to apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the corporation, and all shares of the holding company acquired in the merger shall, for purposes of Part Thirteen, be deemed to have been acquired at the time that the shares of stock of the corporation converted in the merger were acquired, and any shareholder who, immediately prior to the effective time of the merger, was not an affiliated shareholder within the meaning of Article 13.02 of this Act shall not solely by reason of the merger become an affiliated shareholder of the holding company.

K. If the corporate name of a holding company immediately following the effective time of a merger pursuant to Section H of this Article is the same as the corporate name of the corporation immediately prior to the effective time of the merger, the shares of the holding company into which the shares of the corporation are converted in the merger shall be represented by the stock certificates that previously represented the shares of the corporation.

Revisor's Note

Section 10.005 expands the existing provisions of the Texas Business Corporation Act, which allow for the creation of holding

companies without shareholder approval, from for-profit corporations to other entities (other than partnerships) for which the governing source law does not incorporate the Texas Business Corporation Act provisions. The revised law carries over the same protections applicable to for-profit corporations. This expansion is intended to modernize the merger provisions applicable to these other entities and provide greater operational flexibility to those entities. The revised law does not authorize a domestic entity to own or be owned by another entity if such condition is not authorized by other provisions of this code governing the domestic entity.

Revised Law

Sec. 10.006. SHORT FORM MERGER. (a) A parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations as provided by this section if:

(1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization organized under the laws of a jurisdiction that permits a merger of the type authorized by this chapter; and

(2) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

(b) No action by any subsidiary organization that is a domestic entity is required to approve the merger.

(c) If the parent organization will not survive the merger, a plan of merger must be adopted by action of the parent organization in the same manner as a plan of merger not governed by this section or Section 10.005.

(d) If the parent organization will survive the merger, the merger is required to be approved only by a resolution adopted by the governing authority of the parent organization.

(e) Sections 10.001(c)-(e), 10.002(c), 10.003, and 10.007-10.010 apply to a merger approved under Subsection (d), except that the resolution approving the merger should be considered the plan of merger for purposes of those sections.

(f) The resolution approving the merger under Subsection (d) must describe:

(1) the basic terms of the merger;

(2) the organizations that are party to the merger;

and

(3) the organizations that survive the merger.

(g) If the parent organization does not own all of the outstanding ownership or membership interests of each class or series of ownership or membership interests of each subsidiary organization that is a party to the merger, the resolution of the parent organization required by Subsection (d) must describe the terms of the merger, including the cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any person or organization or any combination of the ownership or membership interests, obligations, rights, or other securities, to be used, paid, or delivered by the parent organization on surrender of each ownership or membership interest of the subsidiary organizations not owned by the parent organization.

(h) An entity is not disqualified from effecting a merger under any other provision of this chapter because it qualifies for a merger under this section.

(i) This section shall not apply if a subsidiary organization that is a party to the merger is a partnership.
(TBCA 5.16.A, B (part), C, D, E, F; TLLCA 10.05.A, B (part), C.)

Source Law

[TBCA 5.16]

A. In any case in which at least ninety (90%) per cent of the outstanding shares of each class and series of shares, membership interests, or other ownership interests of one or more domestic or foreign corporations or other entities is owned by another domestic or foreign corporation or other entity, and at least one of the parent or subsidiary entities is a domestic corporation and the other or others are domestic corporations, foreign corporations, or other entities organized under the laws of a jurisdiction that permit such a merger or whose organizational documents or other constituent documents not inconsistent with those laws permit such a merger, the corporation or other entity having such share ownership may (1) merge such other domestic or foreign corporation or corporations or other entities into itself, (2) merge itself into any one or more of such other corporations or other entities, or (3) merge itself and any one or more of such entities or corporations into one or more of the other entities:

(a) in the event that the corporation or other entity having at least 90 percent ownership will be a surviving entity in the merger, by executing and filing articles of merger in accordance with Section B of this Article; or

(b) in the event that the corporation or other entity having at least 90 percent ownership will not be a surviving entity in the merger, by the entity having such ownership adopting a plan of merger in the manner required by the laws of its jurisdiction of organization or formation and its organizational or other constituent documents, except that no action under Section 5.03 shall be required to be taken by the corporation or corporations whose shares are so owned, and executing and filing articles of merger in accordance with Section B of this Article.

B. . . .

(3) . . . If the parent entity does not own all the outstanding shares, membership interests, or other ownership interests of each class of each subsidiary entity that is a party to the merger, the resolution shall state the terms and conditions of the merger, including the cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any person or entity or any combination of the shares, obligations, evidences of ownership, rights, or other securities, to be used, paid or delivered by the surviving entity upon surrender of each share, membership interest, or other ownership interest of the subsidiary entity or entities not owned by the parent entity.

. . . .

C. The articles of merger shall be delivered to the Secretary of State and filed as provided by Sections B and C of Article 5.04 of this Act.

D. The effective date and the effect of such merger shall be the same as provided in Articles 5.05 and 5.06 of this Act if the surviving entity is a domestic corporation.

If the surviving entity is a foreign corporation or other entity, the effective date and the effect of such merger shall be the same as in the case of the merger of domestic corporations except in so far as the laws of such other jurisdiction provide otherwise.

E. In the event all of the shares of a subsidiary domestic corporation that is a party to a merger effected under this Article are not owned by the parent entity immediately prior to the merger, the surviving parent entity shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of each subsidiary domestic corporation a copy of the articles of merger and notify the shareholder that the merger has become effective. Any such shareholder who holds shares of a class or series that would have been entitled to vote on the merger if it had been effected pursuant to Article 5.03 of this Act shall have the right to dissent from the merger and demand payment of the fair value for the shareholder's shares in lieu of the cash or other property to be used, paid or delivered to such shareholder upon the surrender of such shareholder's shares pursuant to the terms and conditions of the merger, with the following procedure:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of the articles of merger make written demand on the surviving parent entity for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such act. The demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by the shareholder. Any shareholder failing to make demand within the twenty (20) day period shall be bound by the corporate action.

(2) Within ten (10) days after receipt by the surviving entity of a demand

for payment by the dissenting shareholder of the fair value of the shareholder's shares in accordance with Subsection (1) of this section, the surviving entity shall deliver or mail to the dissenting shareholder a written notice which shall either set out that the surviving entity accepts the amount claimed in the demand and agrees to pay such amount within ninety (90) days after the date on which the corporate action was effected and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed, or shall contain an estimate by the surviving parent entity of the fair value of such shares, together with an offer to pay the amount of that estimate within ninety (90) days after the date on which such corporate action was effected, upon receipt of notice within sixty (60) days after that date from the shareholder that the shareholder agrees to accept that amount and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed.

(3) If, within sixty (60) days after the date on which the corporate action was effected, the value of the shares is agreed upon between the dissenting shareholder and the surviving entity, payment for the shares shall be made within ninety (90) days after the date on which the corporate action was effected and, in the case of shares represented by certificates, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If, within sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving entity do not so agree, then the dissenting shareholder or the surviving entity may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the

principal office of the corporation is located, asking for a finding and determination of the fair value of the shareholder's shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12.

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to the corporate action is the exclusive remedy for the recovery of the value of the shareholder's shares or money damages to the shareholder with respect to the corporate action. If the surviving entity complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of the shareholder's shares or money damages to such shareholder with respect to such corporate action.

F. If a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 5.03 of this Act, the provisions of Articles 5.11 and 5.12 of this Act shall apply to the rights of the shareholders of a parent corporation to dissent from such merger. Except as otherwise provided in this Article, the provisions of Articles 5.11 and 5.12 of this Act shall not be applicable to a merger effected under the provisions of this Article. The provisions of Article 5.13 of this Act shall be applicable to any merger effected under the provisions of this Article to the extent provided in Article 5.13 of this Act.

[TLLCA 10.05]

A. (1) This article applies to a merger if:

(a) at least 90 per cent of the outstanding membership interests, shares of stock, or other ownership interests of one or more domestic or foreign limited liability companies or other entities is owned by

another domestic or foreign limited liability company or other entity;

(b) at least one of the parent or subsidiary entities is a domestic limited liability company; and

(c) for each parent or subsidiary entity that is not a domestic limited liability company:

(i) the merger of the entity with or into a domestic limited liability company is permitted by the laws under which that entity is formed or organized or by the organizational documents or other constituent documents of the entity that are not inconsistent with those laws; and

(ii) the entity complies with those laws or documents in effectuating the merger.

(2) A parent entity described in Subsection (1) of this Section having at least 90 percent ownership may:

(a) merge the other entity or entities into itself;

(b) merge itself into the other entity or entities; or

(c) merge any one or more of the entities, including itself, into one or more of the other entities.

(3) If the parent entity having at least 90 percent ownership is a surviving entity in the merger, the parent entity must execute and file articles of merger as provided by Section B of this Article. If the parent entity having at least 90 percent ownership is not a surviving entity in the merger, the parent entity must:

(a) adopt a plan of merger in the manner required by Article 10.01 of this Act, except that an action under Article 10.01 is not required by the entity or entities whose membership interests, shares of stock, or other ownership interests are so owned; and

(b) execute and file articles of merger as provided by Section B of this Article.

B. . . .

(5) if the parent entity does not own all of the outstanding membership interest, shares, or other ownership interests of each subsidiary entity party to the merger, the resolution described in Subsection (4) of this Section must state the terms and conditions of the merger, including the securities, cash, or other property to be used, paid, or delivered by the surviving corporation on surrender of each membership interest, share, or other ownership interest of the subsidiary entity or entities not owned by the parent entity;

. . .

C. The articles of merger shall be filed as provided by Section B of Article 10.03 of this Act, become effective as provided by Section C of Article 10.03 of this Act, and have the effect stated in Article 10.04 of this Act.

Revisor's Note

Section 10.006 sets forth the requirements for effecting "short form" mergers where one entity owns more than 90 percent of the voting ownership interest in another entity. These provisions are essentially the same as the provisions currently contained in the Texas Business Corporation Act and Texas Limited Liability Company Act and have been expanded to allow other entities to complete a merger with a 90 percent or more owned subsidiary. The section does not apply if the subsidiary is a partnership.

The source law provisions in the Texas Business Corporation Act and Texas Limited Liability Company Act have special provisions relating to the short form merger, many of which, including provisions governing dissenters' rights, are inexplicably different from the provisions governing a regular merger. There is no policy reason why they should be different except in two primary respects. First, no approval of the minority owners or members of the subsidiary organization is needed when the subsidiary organization merges into the parent

organization. This special provision is found in Section 10.006. Second, the contents of the certificate of merger can be simplified. This special provision is found in Section 10.152. The revised law omits in most other respects the separate special provisions for short form mergers and defers to the general standard merger provisions. Thus, most of the other provisions of Chapter 10 govern short form mergers as well as regular mergers.

Revised Law

Sec. 10.007. EFFECTIVENESS OF MERGER. Except as otherwise provided by Subchapter B, Chapter 4, a merger takes effect at the time provided by the plan of merger, except that a merger that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of merger by the secretary of state or county clerk, as appropriate. (TBCA 5.05, 5.16.D; TLLCA 10.03.C; TNPCA 5.05, 5.07.B (part); TREITA 23.50; TRLPA 2.11(f); TRPA 9.02(f).)

Source Law

[TBCA]

5.05.A. Except as otherwise provided by Article 10.03 of this Act, upon the issuance of the certificate of merger or exchange by the Secretary of State, the merger or share exchange shall be effective.

[TBCA 5.16]

D. The effective date and the effect of such merger shall be the same as provided in Articles 5.05 and 5.06 of this Act if the surviving entity is a domestic corporation. If the surviving entity is a foreign corporation or other entity, the effective date and the effect of such merger shall be the same as in the case of the merger of domestic corporations except in so far as the laws of such other jurisdiction provide otherwise.

[TLLCA 10.03]

C. Except as provided by Article 9.03 of this Act, the merger is effective on the issuance of the certificate of merger by the Secretary of State.

[TNPCA]

5.05.A. Except as provided by Article 10.07 of this Act, on the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.

[TNPCA 5.07]

B. . . .

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

[TREITA]

23.50. Except as otherwise provided by Section 27.10 of this Act, the merger or share exchange is effective when the articles of merger or exchange are filed as required by Section 23.40 of this Act.

[TRLPA 2.11]

(f) Except as provided in Section 2.12 of this Act, the merger shall be effective upon the issuance of the certificate of merger by the secretary of state.

[TRPA 9.02]

(f) Effective Date. Except as provided by Section 9.06, the merger shall be effective on the issuance of the certificate of merger by the secretary of state or, if a certificate of merger need not be executed, as provided in the plan of merger.

Revisor's Note

No substantive change is intended. The revised law cross-references to the provisions in Subchapter B of Chapter 4 of the revised law, which generally permit

delayed effectiveness of filing. The source laws also generally cross-reference to other provisions that permit delayed effectiveness of filings.

Revised Law

Sec. 10.008. EFFECT OF MERGER. (a) When a merger takes effect:

(1) the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without:

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of each organization that is a party to the merger are allocated to one or more of the surviving or new organizations in the manner provided by the plan of merger;

(4) each surviving or new domestic organization to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving domestic entity or non-code organization liable or otherwise obligated at the time of the merger, and no other new domestic entity or non-code organization created under the plan of merger is liable for the debt or other obligation;

(5) any proceeding pending by or against any domestic entity or by or against any non-code organization that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic entity or entities or the surviving or new non-code organization or non-code organizations to which the liability, obligation, asset, or right associated with that proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding;

(6) the governing documents of each surviving domestic entity are amended to the extent provided by the plan of merger;

(7) each new filing entity whose certificate of formation is included in the plan of merger under this chapter, on meeting any additional requirements, if any, of this code for its formation, is formed as a domestic entity under this code as provided by the plan of merger;

(8) the ownership or membership interests of each

organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these are converted and exchanged and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the certificate of merger or, if applicable, any rights to receive the fair value for the ownership or membership interests previously held by them provided under this code; and

(9) notwithstanding Subdivision (4), the surviving or new organization named in the plan of merger as primarily obligated to pay the fair value of an ownership or membership interest under Section 10.003(2) is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

(b) If the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new organizations, pro rata to the total number of surviving and new organizations resulting from the merger.

(c) If a surviving organization in a merger is not a domestic entity, the surviving organization is considered to have:

(1) appointed the secretary of state in this state as the organization's agent for service of process in a proceeding to enforce any obligation of a domestic entity that is a party to the merger; and

(2) agreed to promptly pay to the dissenting owners or members of each domestic entity that is a party to the merger who have the right of dissent and appraisal under this code the amount, if any, to which they are entitled under this code.

(d) If the surviving organization in a merger is not a domestic entity, the organization shall register to transact business in this state if the entity is required to register for that purpose by another provision of this code. (TBCA 5.01.D, 5.06.A, C, 5.16.B (part); TLLCA 10.04; TNPCA 5.06, 5.07.B (part); TREITA 23.10(D), 23.60(A), (C); TRLPA 2.11(g) (part); TRPA 9.02(g) (part).)

Source Law

[TBCA 5.01]

D. Upon the merger's taking effect, the surviving or new foreign corporation or other entity, if any, that is the sole surviving or new foreign corporation or other entity in the merger, or if more than one domestic or foreign corporation or other entity is to survive or to be created by the terms of the plan of merger, the surviving or new foreign corporation or other entity that is designated in the plan of merger to be the entity obligated for the payment of the fair value of any shares held by a shareholder who has complied with the requirements of Article 5.12 of this Act for the recovery of the fair value of his shares, is deemed:

(1) to appoint the Secretary of State in this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger; and

(2) to agree that it will promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under Article 5.11 of this Act.

[TBCA 5.06]

A. When a merger takes effect:

(1) the separate existence of every domestic corporation that is a party to the merger, except any surviving or new domestic corporation, shall cease;

(2) all rights, title and interests to all real estate and other property owned by each domestic or foreign corporation and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or new domestic or foreign corporations and other entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other

encumbrances thereon;

(3) all liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign corporation or other entity liable thereon at the time of the merger and no other new domestic or foreign corporation or other entity created thereby, shall be liable therefor;

(4) a proceeding pending by or against any domestic or foreign corporation or by or against any other entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign corporation or corporations or the surviving or new other entity or other entities to which the liability, obligation, asset or right associated with such proceeding is allocated to and vested in pursuant to the plan of merger may be substituted in the proceeding;

(5) the articles of incorporation of each surviving corporation shall be amended to the extent provided in the plan of merger;

(6) each new domestic corporation, the articles of incorporation of which are set forth in the plan of merger pursuant to Article 5.01 of this Act, shall be incorporated as a corporation under this Act; and each other entity to be incorporated or organized under the laws of this State, the organizational documents of which are set forth in the plan of merger, shall, upon an executed copy of the articles of merger being

delivered to or filed with any required governmental entity with which organizational documents of such other entity are required to be delivered or filed, and upon meeting such additional requirements, if any, of law for its incorporation or organization, shall be incorporated or organized as provided in the plan of merger; and

(7) the shares of each domestic or foreign corporation and the shares or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or part, into shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic or foreign corporations or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged and the former holders of the shares of each domestic corporation that is a party to the merger shall be entitled only to the rights provided in the articles of merger or to their rights under Article 5.11 of this Act.

C. If the plan of merger shall fail to provide for the allocation and vesting of the right, title, and interest in any particular item of real estate or other property or for the allocation of any liability or obligation of any party to the merger, such item of real estate or other property shall be owned in undivided interest by, or such liability or obligation shall be the joint and several liability and obligation of, each of the surviving and new domestic and foreign corporations and other entities, pro rata to the total number of surviving and new domestic and foreign corporations and other entities resulting from the merger.

[TBCA 5.16]

B. The articles of merger shall be

signed on behalf of the parent entity by an officer or other duly authorized representative of the parent entity and shall set forth:

. . .

(4) . . . If the surviving entity is a foreign corporation or other entity, on the merger taking effect the surviving entity is deemed to (a) appoint the Secretary of State of this state as its agent for service of process to enforce an obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger, and (b) agree that it will promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under this Article.

[TLLCA]

10.04.A. When a merger takes effect:

(1) the separate existence of every domestic or foreign limited liability company or other entity that is a party to the merger, except any surviving or new domestic or foreign limited liability company or other entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each domestic or foreign limited liability company and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or resulting entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances on the property;

(3) all liabilities and obligations of each domestic or foreign limited liability company and each other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign limited liability companies and other entities in the manner provided by the plan of merger, and each surviving or new domestic or foreign limited

liability company or other entity to which a liability or obligation has been allocated under the plan of merger becomes the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger, law, or contract, a party to the merger other than a surviving domestic or foreign limited liability company or other entity liable at the time of the merger or another new domestic or foreign limited liability company or other entity created is not liable for the liability or obligation;

(4) a proceeding pending by or against a domestic or foreign limited liability company or another entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign limited liability company or limited liability companies or the surviving or new other entity or other entities the liability, obligation, asset, or right associated with the proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding;

(5) the articles of organization and regulations of each surviving domestic limited liability company and the organizational documents and other constituent documents of each surviving foreign limited liability company and other entity shall be amended to the extent provided in the plan of merger;

(6) each new domestic limited liability company, the articles of organization of which are included in the plan of merger under Article 10.02 of this Act, shall be formed as a limited liability company under this Act, and each other entity to be formed or organized under the laws of this state, the organizational documents of which are included in the plan of merger, on an executed copy of the certificate of merger being delivered to or filed with any required governmental entity with which organizational documents of the other entity are required to be delivered or filed and on meeting additional requirements, if any, of law for its formation or organization, shall be

formed or organized as provided in the plan of merger;

(7) the limited liability company interests of each domestic or foreign limited liability company and the interests, shares, or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or in part, into limited liability company interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign limited liability companies or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into a combination of those items, shall be so converted and exchanged, and the former members of each domestic limited liability company that is a party to the merger shall be entitled only to the rights provided in the plan of merger; and

(8) if the plan of merger does not provide for the allocation and vesting of the right, title, and interest in a particular item of real estate or other property or for the allocation of a liability or obligation of a party to the merger, the item of real estate or other property shall be owned in undivided interests by, or the liability or obligation shall be a joint and several liability and obligation of, each of the surviving and new domestic and foreign limited liability companies and other entities, pro rata to the total number of surviving and new domestic and foreign limited liability companies and other entities resulting from the merger.

[TNPCA]

5.06.A. When such merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation,

which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the

plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

[TNPCA 5.07]

B. . . .

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

[TREITA 23.10]

(D) On the merger's taking effect, the surviving or new foreign corporation, real estate investment trust, partnership, or other entity, if any, that is the sole surviving or new foreign corporation, real estate investment trust, partnership, or other entity in the merger, or if more than one domestic or foreign corporation, real estate investment trust, partnership, or other entity is to survive or to be created by the terms of the plan of the merger, the surviving or new foreign corporation, real estate investment trust, partnership, or other entity that is designated in the plan of merger to be the entity obligated for the payment of the fair value of any shares held by a shareholder who has complied with the requirements of Section 25.20 of this Act for

the recovery of the fair value of the shareholder's shares is considered to:

(1) appoint the secretary of state in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic entity that is a party to the merger; and

(2) agree that it will promptly pay to the dissenting shareholders of each domestic entity that is a party to the merger the amount, if any, to which the dissenting shareholders are entitled under Section 25.10 of this Act.

[TREITA 23.60]

(A) When a merger under Section 23.10 or 23.20 of this Act takes effect:

(1) the separate existence of every domestic real estate investment trust that is a party to the merger, except any surviving or new domestic real estate investment trust, ceases;

(2) all rights, title, and interest to all real estate and other property owned by each domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, and other entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances on the real estate and property;

(3) all liabilities and obligations of each domestic or foreign corporation, real estate investment trust, partnership, and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, or other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign

corporation, real estate investment trust, partnership, or other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger shall be the primary obligor for the liability or obligation and, except as otherwise set forth in the plan of merger or as provided by law or contract, no other party to the merger, other than a surviving domestic or foreign corporation, real estate investment trust, partnership, or other entity created thereby, shall be liable for the liability or obligation;

(4) a proceeding pending by or against any domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new entity or entities to which the liability, obligation, asset, or right associated with such proceeding is allocated to and vested in pursuant to the plan of merger, may be substituted in the proceeding;

(5) the declaration of trust of each surviving real estate investment trust shall be amended to the extent provided in the plan of merger;

(6) each new domestic real estate investment trust that has a declaration of trust set forth in the plan of merger pursuant to Section 23.10 of this Act shall be formed as a real estate investment trust under this Act; and each other entity to be incorporated or organized under the laws of this State that has organizational documents set forth in the plan of merger, on an executed copy of the articles of merger being delivered to or filed with any required governmental entity with which organizational documents of such other entity are required to be delivered or filed, and on meeting such additional requirements, if any, of law for its incorporation or organization, shall be incorporated or organized as provided in the plan of merger; and

(7) the shares of each domestic or foreign real estate investment trust and the

shares or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or part, into shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign corporations, real estate investment trusts, partnerships, or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged, and the former holders of the shares of each domestic real estate investment trust that is a party to the merger shall be entitled only to the rights provided in the articles of merger or to their rights of dissent under Section 25.10 of this Act.

(C) If the plan of merger fails to provide for the allocation and vesting of the right, title, and interest in any particular item of real estate or other property or for the allocation of any liability or obligation of any party to the merger, that item of real estate or other property shall be owned in undivided interest by, or such liability or obligation shall be the joint and several liability and obligation of, each of the surviving and new domestic and foreign corporations, real estate investment trusts, partnerships, and other entities, pro rata to the total number of surviving and new domestic and foreign corporations, real estate investment trusts, partnerships, and other entities resulting from the merger.

[TRLPA 2.11]

(g) When a merger takes effect:

(1) the separate existence of every domestic limited partnership that is a party to the merger, except any surviving or new domestic limited partnership, shall cease;

(2) all rights, title, and

interests to all real estate and other property owned by each domestic or foreign limited partnership and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or resulting entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of each domestic or foreign limited partnership and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign limited partnerships and other entities in the manner set forth in the plan of merger, and each surviving or new domestic foreign limited partnership, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign limited partnership or other entity liable thereon at the time of the merger and no other new domestic or foreign limited partnership or other entity created thereby, shall be liable therefor;

(4) a proceeding pending by or against any domestic or foreign limited partnership or by or against any other entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign limited partnership or limited partnerships or the surviving or new other entity or other entities to which the liability, obligation, asset or right associated with such proceeding is allocated to and vested in pursuant to the plan of merger may be substituted in the proceeding;

(5) the certificate of limited partnership of each surviving domestic

limited partnership shall be amended to the extent provided in the plan of merger;

(6) each new domestic limited partnership, the certificate of limited partnership of which is set forth in the plan of merger under Subdivision (4) of Subsection (b) of this section, shall be formed as a limited partnership under this Act; and each other entity to be formed or organized under the laws of this State, the organizational documents of which are set forth in the plan of merger, shall, upon an executed copy of the certificate of merger being delivered to or filed with any required governmental entity with which organizational documents of such another entity are required to be delivered or filed, and upon meeting such additional requirements, if any, of law for its formation or organization, shall be formed or organized as provided in the plan of merger;

(7) the partnership interests of each domestic or foreign limited partnership and the partnership interests, shares or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or in part, into partnership interests, shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic or foreign limited partnerships or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged and the former partners of each domestic limited partnership that is a party to the merger shall be entitled only to the rights provided in the plan of merger;

(8) if the plan of merger shall fail to provide for the allocation and vesting of the right, title, and interest in any particular item of real estate or other property or for the allocation of any liability or obligation of any party to the

merger, such item of real estate or other property shall be owned in undivided interest by, or such liability or obligation shall be a joint and several liability and obligation of, each of the surviving and new domestic and foreign limited partnerships and other entities, pro rata to the total number of surviving and new domestic and foreign limited partnerships and other entities resulting from the merger; and

. . .

[TRPA 9.02]

(g) Effect. When a merger takes effect:

(1) the separate existence of every domestic partnership that is a party to the merger, except any surviving or new domestic partnership, shall cease;

(2) all rights, title, and interests to all real estate and other property owned by each domestic or foreign partnership and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or resulting entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of each domestic or foreign partnership and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign partnerships and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign partnership, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign partnership or other

entity liable thereon at the time of the merger and no other new domestic or foreign partnership or other entity created thereby, shall be liable therefor;

(4) a proceeding pending by or against any domestic or foreign partnership or by or against any other entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign partnership or the surviving or new other entity or other entities to which the liability, obligation, asset or right associated with such proceeding is allocated to and vested in pursuant to the plan of merger may be substituted in the proceeding;

(5) the partnership agreement of each surviving domestic partnership shall be amended to the extent provided in the plan of merger;

(6) each new domestic partnership to be formed under the plan of merger shall be formed as a partnership under this Act, and each other entity to be formed or organized under the laws of this state, the organizational documents of which are set forth in the plan of merger, upon an executed copy of the certificate of merger being delivered to or filed with any required governmental entity with which organizational documents of such other entity are required to be delivered or filed, and upon meeting the additional requirements, if any, of law for its formation or organization, shall be formed or organized as provided in the plan of merger;

(7) the partnership interests of each domestic or foreign partnership and the partnership interests, shares, or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or in part, into partnership interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign partnerships or other entities, into cash, or other property, including shares,

obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged and the former partners of each domestic partnership that is a party to the merger are entitled to the rights provided in the plan of merger;

(8) if the plan of merger fails to provide for the allocation and vesting of the right, title, and interest in a particular item of real estate or other property or for the allocation of a liability or obligation of a party to the merger, then the item of real estate or other property shall be owned in undivided interest by, or the liability or obligation shall be a joint and several liability and obligation of, each of the surviving and new domestic and foreign partnerships and other entities, pro rata to the total number of surviving and new domestic and foreign partnerships and other entities resulting from the merger;

. . .

Revisor's Note

The revised law omits the provisions in the source laws (e.g., the second clause of Texas Business Corporation Act Article 5.06.A(6)) that require compliance with other Texas laws to incorporate or organize any new Texas non-code organization surviving the merger that is to be incorporated or organized pursuant to the plan of merger. By omitting these provisions, the revised law, by implication and not expressly, defers to the other Texas law governing the non-code organization for the rules governing the formation requirements of these organizations in connection with the merger. The source laws expressly defer to such other laws. This change also conforms with the change in Subsection (a)(8) of Section 10.002, which omits the need to attach the governing documents of certain non-code organizations that are created by the merger. The reasons for that change are discussed in the Revisor's Note to Section 10.002.

Subsection (d) of the revised law has been added to clarify what is implied in the source laws, namely that a foreign entity that survives the merger must register to transact business in Texas if it is required by applicable Texas law. In the revised law, Chapter 9 would govern when a foreign entity must register to transact business in Texas.

Subsection (a)(9) changes the obligor on the obligation to pay the fair value of the interests of dissenting owners to add that all surviving organizations are secondarily liable for that payment. See Revisor's Note to Section 10.003.

Revised Law

Sec. 10.009. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP MERGERS. (a) A partner of a domestic partnership that is a party to a merger does not become liable as a result of the merger for the liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner.

(b) A partner of a domestic partnership that is a party to a merger who remains in or enters a partnership is treated as an incoming partner in the partnership when the merger takes effect for purposes of determining the partner's liability for a debt or obligation of the partnership or partnerships that are parties to the merger or to be created in the merger and in which the partner was not a partner.

(c) If a partnership merges with an organization and, because of the merger, no longer exists, a former partner who becomes an owner or member of the surviving organization may, until the first anniversary of the effective date of the merger, bind the surviving organization to a transaction for which the owner or member no longer has authority to bind the organization if the transaction is one in which the actions by the owner or member as a partner would have bound the partnership before the effective date of the merger, and the other party to the transaction:

(1) does not have actual or constructive notice of the merger;

(2) had done business with the terminated partnership within one year preceding the effective date of the merger; and

(3) reasonably believes that the partner who was previously an owner or member of the partnership that was merged into the surviving organization and is now an owner or member of the surviving organization has the authority to bind the surviving organization to the transaction at the time of the

transaction.

(d) If a partnership is formed under a plan of merger, the existence of the partnership as a partnership begins when the merger takes effect, and the persons to be partners become partners at that time.

(e) A partner in a domestic partnership that is a party to the merger but does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger.

(f) The partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership.

(g) Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed in its partnership agreement. (TRLPA 2.01(b) (part), 2.11(a) (part), (g) (part); TRPA 2.02(d), 9.01(c), 9.02(a) (part), (g) (part).)

Source Law

[TRLPA 2.01]

(b) . . . In the case of a limited partnership being formed under a plan of merger or a plan of conversion under Section 2.11 or 2.15 of this Act, the existence of the limited partnership as a limited partnership begins on the effectiveness of the merger or the conversion, as applicable, and the persons to be partners shall become general or limited partners, as applicable, as of that time.

[TRLPA 2.11]

(a) A domestic limited partnership may adopt a plan of merger and one or more domestic limited partnerships may merge with one or more domestic or foreign limited partnerships or other entities if:

(1) the partnership agreement of each domestic limited partnership that is a party to the plan of merger contains provisions that authorize the merger provided for in the plan of merger adopted by the limited partnership;

(2) each domestic limited partnership that is a party to the plan of merger approves the plan of merger in the manner prescribed in its partnership agreement;

. . .

(4) no limited partner of a domestic limited partnership that is a party to the merger will, as a result of such merger, become personally liable for the liabilities or obligations of any other person or entity unless such limited partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by such domestic limited partnership.

(g) . . .

(9) a partner of a domestic or foreign limited partnership that is a party to a merger does not become personally liable as a result of the merger for a liability or obligation of another person that is a party to the merger unless the party consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner; and for purposes of determining the liability of partners in a domestic limited partnership that is a party to the merger for the debts and obligations of other parties to the merger in which that partner otherwise was not or is not a partner or other owner of an interest:

(A) a partner who remains in or enters a domestic or foreign limited partnership or other entity that survives a merger or that enters a domestic or foreign limited partnership or other entity created by the terms of the plan of merger shall be treated as an incoming partner in the new or surviving partnership as of the effective date of the merger for the purpose of determining the partner's liability for a debt or obligation of the other partnership or other entities that are parties to the merger and in which the partner was not associated; and

(B) a partner in a domestic partnership that is a party to the merger but that does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger.

[TRPA 2.02]

(d) Partnership Resulting from Merger or Conversion. In the case of a new partnership being formed pursuant to a plan of merger or a plan of conversion under Article IX of this Act, the existence of the partnership as a partnership shall begin on the effectiveness of the merger or the conversion, as the case may be, and the persons to be partners shall become partners as of that time.

[TRPA 9.01]

(c) Liability of Former Limited Partner. A limited partner who remains in a partnership that results from the conversion of a limited partnership to a partnership that is not a limited partnership is treated as an incoming partner in the partnership as of the effective date of the conversion for purposes of determining the partner's liability:

- (1) to the partners of the partnership; and
- (2) for the debts and obligations of the partnership.

[TRPA 9.02]

(a) Adoption of Plan. A domestic partnership may adopt a plan of merger and one or more domestic partnerships may merge with one or more domestic or foreign partnerships or other entities if:

- (1) the partnership agreement of each domestic partnership that is a party to the plan of merger contains provisions that authorize the merger provided for in the plan of merger adopted by the partnership;
- (2) each domestic partnership that is a party to the plan of merger approves the plan of merger in the manner prescribed in its partnership agreement; and

. . .

(g) Effect. When a merger takes effect:

. . .

(9) a partner of a partnership that is a party to a merger does not become

personally liable as a result of the merger for a liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner; and for purposes of determining the liability of partners in a domestic partnership that is a party to the merger for the debts and obligations of other parties to the merger in which that partner otherwise was not or is not a partner or other owner of an interest:

(A) a partner who remains in or enters a domestic or foreign partnership or other entity that survives a merger or that enters a domestic or foreign partnership or other entity created by the terms of the plan of merger shall be treated as an incoming partner in the new or surviving partnership as of the effective date of the merger; and

(B) a partner in a domestic partnership that is a party to the merger but that does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger; and

(10) if a domestic or foreign partnership merges with another domestic or foreign partnership or other entity and through the merger process no longer exists, a person who becomes a member of the surviving domestic or foreign partnership or other entity, for a period of one year after the effective date of the merger, may bind the surviving entity to a transaction for which it no longer has authority to bind the entity if the transaction is one in which the partner's actions would bind the foreign or domestic partnership before the effective date of the merger and the other party to the transaction:

(A) does not have notice of the merger;

(B) had done business with the partnership which no longer exists within one year preceding the effective date of the

merger; and

(C) reasonably believes that the partner who was previously a member of the partnership which was merged into the surviving entity and is now a partner of the surviving entity was a partner with authority to bind the partnership to the transaction at the time of the transaction.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION MERGERS. (a) A domestic nonprofit corporation may not merge into another entity if the domestic nonprofit corporation would, because of the merger, lose or impair its charitable status.

(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations that continue as the surviving entity or entities.

(c) A domestic nonprofit corporation may not merge with a foreign for-profit entity if the domestic nonprofit corporation does not continue as the surviving entity.

(d) One or more domestic nonprofit corporations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities. (TNPCA 5.01, 5.02, 5.07.A.)

Source Law

5.01.A. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

B. Each corporation shall adopt a plan of merger setting forth:

(1) The name of the corporation proposing to merge.

(2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger.

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

5.02.A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

B. Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate.

(2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(3) The terms and conditions of the proposed consolidation.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[5.07]

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated, if such merger or consolidation is permitted by the laws of the State under which each such foreign corporation is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation. In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

Revisor's Note

Chapter 10 modernizes, and provides greater clarity and flexibility than, the existing Texas Non-Profit Corporation Act merger provisions. However, for public policy reasons, Section 10.010 continues

important merger restrictions on nonprofit corporations that the Texas Attorney General has interpreted to exist under the Texas Non-Profit Corporation Act. As provided in Section 10.010, a domestic nonprofit corporation may not merge into another entity if the domestic corporation would, because of the merger, lose or impair its charitable status. Mergers with for-profit or non-code organizations are permitted so long as any domestic nonprofit corporations continue as the surviving entities. The authority to merge also includes the authority for a domestic nonprofit corporation to merge into a foreign nonprofit entity so long as the foreign nonprofit entity is the survivor as presently permitted under the Texas Non-Profit Corporation Act. When a foreign nonprofit entity survives, the entity is deemed to have appointed the secretary of state as its agent for service of process related to the transaction under Section 10.008(a).

[Sections 10.011-10.050 reserved for expansion]

SUBCHAPTER B. EXCHANGES OF INTERESTS

Revised Law

Sec. 10.051. INTEREST EXCHANGES. (a) For the purpose of acquiring all of the outstanding ownership or membership interests of one or more classes or series of one or more domestic entities, one or more domestic entities or non-code organizations may adopt a plan of exchange.

(b) To make an interest exchange under this section:

(1) the governing authority of each domestic entity the ownership or membership interests of which are to be acquired in the interest exchange must act on a plan of exchange and, if otherwise required by this code, the owners or members of the domestic entity must approve the plan of exchange in the manner provided by this code; and

(2) each acquiring domestic entity must take all action that may otherwise be required by this code and its governing documents to effect the exchange.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If a non-code organization is to acquire ownership or membership interests in the exchange, each non-code organization must take all action that is required under the laws of the organization's jurisdiction of formation and the organization's governing documents to effect the exchange.

(e) If one or more non-code organizations as part of the plan of exchange are to issue ownership or membership interests, the issuance of the ownership or membership interests must be permitted by the laws under which the non-code organizations are incorporated or organized or not inconsistent with those laws.

(f) A plan of exchange may not be effected if any owner or member of a domestic entity that is a party to the interest exchange will, as a result of the interest exchange, become personally liable, without the consent of the owner or member, for the liabilities or obligations of any other person or organization. (TBCA 5.02.A, D, 5.03.A (part); TLLCA 10.06.A; TREITA 23.20(A), (D); TRLPA 2.11(h) (part); TRPA 9.03(a) (part).)

Source Law

[TBCA 5.02]

A. One or more domestic or foreign corporations or other entities may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if:

(1) the board of directors of each domestic corporation that is a party to the plan of exchange acts on a plan of exchange in the manner prescribed by Article 5.03 of this Act and its shareholders (if required by Article 5.03 of this Act) approve the plan of exchange;

(2) one or more foreign corporations or other entities is to issue shares or other interests as part of the plan of exchange, the issuance of such shares or interests is either permitted by the laws under which such foreign corporation or other entity is incorporated, organized, or not inconsistent with such laws; and

(3) each acquiring domestic or foreign corporation or other entity takes all action that may be required by the laws of the state or country under which it was incorporated or organized and by its constituent documents to effect the exchange.

D. A plan of exchange may not be effected if any shareholder of a domestic corporation that is a party to the share exchange will, as a result of the share exchange, become personally liable, without his consent, for the liabilities or

obligations of any other person or entity.

[TBCA 5.03]

A. Except as provided by Sections G and H of this Article, after acting on a plan of merger or exchange in the manner prescribed by Subsection (1) of Section B of this Article, the board of directors of each domestic corporation that is a party to the merger, and the board of directors of each domestic corporation whose shares are to be acquired in the share exchange, shall submit the plan of merger or exchange for approval by its shareholders. . . .

[TLLCA 10.06]

A. One or more domestic or foreign limited liability companies or other entities may adopt a plan of exchange by which an entity acquires all of the outstanding limited liability company interests of one or more domestic limited liability companies or all of the outstanding interests, stock, partnership interests, or other ownership interests in one or more other entities in exchange for cash or securities of the acquiring entity if:

(1) each domestic limited liability company, the interests of which are to be acquired under the plan of exchange, approves the plan of exchange by majority vote or consent of its members or in a manner prescribed in its regulations; and

(2) each acquiring domestic or foreign limited liability company or other entity takes all action that may be required by the laws of the state or country under which it was formed and as required by its constituent documents to effect the exchange.

[TREITA 23.20]

(A) One or more domestic or foreign corporations, real estate investment trusts, partnerships, or other entities may acquire all of the outstanding shares of one or more classes or series of one or more domestic real estate investment trusts if:

(1) the trust managers of each

domestic real estate investment trust that is a party to the plan of exchange acts on a plan of exchange in the manner prescribed by Section 23.30 of this Act and its shareholders, if required by Section 23.30 of this Act, approve the plan of exchange;

(2) the issuance of shares or interests issued as part of the plan of exchange is either permitted by the laws under which the domestic or foreign corporations, real estate investment trusts, partnerships, or other entities are incorporated or organized or not inconsistent with those laws, if one or more foreign corporations, real estate investment trusts, partnerships, or other entities are to issue shares or other interests as part of the plan of exchange; and

(3) each acquiring domestic or foreign corporation, real estate investment trust, partnership, or other entity takes all action that may be required by the laws of the state or country under which the entity was incorporated or organized and by its constituent documents to effect the exchange.

(D) A plan of exchange may not be effected if any shareholder of a domestic real estate investment trust that is a party to the share exchange will, as a result of the share exchange, become personally liable, without the shareholder's consent, for the liabilities or obligations of any other person or entity.

[TRLPA 2.11]

(h) One or more domestic or foreign limited partnerships or other entities may adopt a plan of exchange by which a domestic or foreign limited partnership or other entity acquires all of the outstanding partnership interests of one or more domestic limited partnerships in exchange for cash, securities, or other property of the acquiring domestic or foreign limited partnership or other entity, if:

(1) . . . if one or more foreign limited partnerships or other entities are to

issue shares or other interests as part of the plan of exchange, the issuance of those shares or other interests is either permitted by the laws under which that foreign limited partnership or other entity is formed or not inconsistent with those laws;

. . .

(3) each acquiring domestic or foreign limited partnership or other entity takes all action that may be required by the laws of the state or country under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange. . . .

[TRPA 9.03]

(a) One or more domestic or foreign partnerships may adopt a plan of exchange by which a domestic or foreign partnership or other entity acquires all of the outstanding partnership interests of one or more domestic partnerships in exchange for cash or securities of the acquiring domestic or foreign partnership or other entity, if:

(1) . . . if one or more foreign partnerships or other entities is to issue shares or other interests as part of the plan of exchange, the issuance of those shares or other interests is either permitted by the laws under which that foreign partnership or other entity is formed or not inconsistent with those laws;

. . .

(3) each acquiring domestic or foreign partnership or other entity takes all action that may be required by the laws of the state under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange.

Revisor's Note

No substantive change is intended, except that the authority to conduct an interest exchange has been extended to nonprofit corporations and cooperative associations because the Texas Non-Profit

Corporation Act and Cooperative Association Act did not provide for interest exchanges. Any restrictions on the activities of a nonprofit corporation or cooperative association are not affected by this change because the entity remains intact.

Revised Law

Sec. 10.052. PLAN OF EXCHANGE: REQUIRED PROVISIONS. (a) A plan of exchange must include:

(1) the name of each domestic entity the ownership or membership interests of which are to be acquired;

(2) the name of each acquiring organization;

(3) if there is more than one acquiring organization, the ownership or membership interests to be acquired by each organization;

(4) the terms and conditions of the exchange; and

(5) the manner and basis of exchanging the ownership or membership interests to be acquired for:

(A) ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the acquiring organizations that is a party to the plan of exchange;

(B) cash;

(C) other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of those items.

(b) The manner and basis of exchanging an ownership or membership interest of an owner or member that is exchanged in a manner or basis different from any other owner or member having ownership or membership interests of the same class or series must be included in the plan of exchange in the same manner as provided by Subsection (a)(5). (TBCA 5.02.B; TREITA 23.20(B).)

Source Law

[TBCA 5.02]

B. A plan of exchange must set forth:

(1) the name of the corporation or corporations whose shares will be acquired and the name of each acquiring domestic or foreign corporation and other entity;

(2) the terms and conditions of the exchange including, if there is more than one acquiring domestic or foreign corporation or other entity, the shares to be acquired by each such corporation or other entity; and

(3) the manner and basis of exchanging the shares to be acquired for

shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the acquiring domestic or foreign corporations or other entities that is a party to the plan of exchange, or for cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or for any combination of the foregoing, and if any shares or other evidences of ownership of any holder of a class or series of shares or other evidence of ownership is to be exchanged in a manner or basis different than any other holder of shares of such class or series or other evidence of ownership, the manner and basis applicable to such holder.

[TREITA 23.20]

(B) A plan of exchange must set forth:

(1) the name of the real estate investment trust or trusts whose shares will be acquired and the name of each acquiring domestic or foreign corporation, real estate investment trust, partnership, or other entity;

(2) the terms and conditions of the exchange including, if there is more than one acquiring domestic or foreign corporation, real estate investment trust, partnership, or other entity, the shares to be acquired by each such entity; and

(3) the manner and basis of exchanging the shares to be acquired for shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the acquiring domestic or foreign corporations, real estate investment trusts, partnerships, or other entities that are parties to the plan of exchange, or for cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or for any combination of the foregoing.

Revisor's Note

No substantive change is intended. The revised law is based on the provisions of the Texas Business Corporation Act and Texas Real Estate Investment Trust Act. While the Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, and Texas Revised Partnership Act authorize the adoption of a plan of exchange, these source laws do not specify the contents of the plan. However, the contents required by the revised law are basic minimum contents that can be implied in these source laws. The revised law also extends to entities other than for-profit corporations (and the entities whose governing statutes incorporate the Texas Business Corporation Act as supplemental law) the Texas Business Corporation Act provisions permitting ownership interests of the same class or series to be treated differently. See also the Revisor's Note to Section 10.051.

Revised Law

Sec. 10.053. PLAN OF EXCHANGE: PERMISSIVE PROVISIONS. A plan of exchange may include any other provisions not required by Section 10.052 relating to the interest exchange. (TBCA 5.02.C; TREITA 23.20(C).)

Source Law

[TBCA 5.02]

C. The plan of exchange may set forth any other provisions relating to the exchange and may be contained in and be a part of a plan of merger.

[TREITA 23.20]

(C) The plan of exchange may set forth any other provisions relating to the exchange and may be contained in and be a part of a plan of merger.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Notes to Section 10.051 and Section 10.052.

Revised Law

Sec. 10.054. EFFECTIVENESS OF EXCHANGE. Except as otherwise provided by Subchapter B, Chapter 4, an interest exchange takes

effect at the time provided in the plan of exchange or otherwise agreed to by the parties, except that an interest exchange that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of exchange by the secretary of state or county clerk, as appropriate. (TBCA 5.05; TLLCA 10.06.B (part); TREITA 23.50; TRLPA 2.11(h) (part); TRPA 9.03(b) (part).)

Source Law

[TBCA]

5.05.A. Except as otherwise provided by Article 10.03 of this Act, upon the issuance of the certificate of merger or exchange by the Secretary of State, the merger or share exchange shall be effective.

[TLLCA 10.06]

B. A filing with the Secretary of State is not necessary to evidence or effect the interest exchange with respect to a domestic limited liability company that is a party to the interest exchange. When an interest exchange takes effect as provided in the plan of exchange:

. . .

[TREITA]

23.50. Except as otherwise provided by Section 27.10 of this Act, the merger or share exchange is effective when the articles of merger or exchange are filed as required by Section 23.40 of this Act.

[TRLPA 2.11]

(h) . . .

(3) . . . No filing with the secretary of state shall be necessary in order to evidence or effect such interest exchange with respect to a domestic limited partnership that is a party to such interest exchange. When an interest exchange takes effect as provided in the plan of exchange

[TRPA 9.03]

(b) Filing with the secretary of state is not necessary to evidence or effect an interest exchange under this section for a

domestic partnership that is a party to the interest exchange. When an interest exchange takes effect as provided in the plan of exchange:

. . .

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.051. The revised law cross-references to the provisions in Subchapter B of Chapter 4 of the revised law, which generally permit delayed effectiveness of filing. The source laws also generally cross-reference to other provisions that permit delayed effectiveness of filings.

Revised Law

Sec. 10.055. GENERAL EFFECT OF INTEREST EXCHANGE. When an interest exchange takes effect:

(1) the ownership or membership interest of each acquired organization is exchanged as provided in the plan of exchange, and the former owners whose interests are exchanged under the plan of exchange are entitled only to the rights provided in the certificate of exchange or, if applicable, a right to receive the fair value for the ownership or membership interests provided under Subchapter H; and

(2) the acquiring organization has all rights, title, and interests with respect to the ownership or membership interest to be acquired by it subject to the provisions of the certificate of exchange. (TBCA 5.06.B; TLLCA 10.06.B (part); TREITA 23.60(B); TRLPA 2.11(h) (part); TRPA 9.03(b) (part).)

Source Law

[TBCA 5.06]

B. When a share exchange takes effect, the shares of each acquired corporation shall be deemed to have been exchanged as provided in the plan of exchange, and the former holders of the shares exchanged pursuant to the plan of exchange shall be entitled only to the exchange rights provided in the articles of exchange or to their rights under Article 5.11 of this Act and the acquiring domestic or foreign corporation or corporations and the acquiring other entity or other entities of the shares to be acquired and exchanged in the share exchange shall be entitled to all rights, title, and

interests with respect to the shares so acquired and exchanged subject to the provisions in the articles of exchange.

[TLLCA 10.06]

B. . . . When an interest exchange takes effect as provided in the plan of exchange:

(1) the limited liability company interests of each domestic limited liability company that are to be acquired under the plan of exchange are considered exchanged as provided in the plan of exchange;

(2) the former holders of the limited liability company interests exchanged under the plan of exchange are entitled only to the exchange rights provided in the plan of exchange; and

(3) the acquiring domestic or foreign limited liability company or other entity or entities are entitled to all rights, title, and interests with respect to the interests so acquired and exchanged, subject to the provisions in the plan of exchange.

[TREITA 23.60]

(B) When a share exchange takes effect, the shares of each acquired real estate investment trust are considered to have been exchanged as provided in the plan of exchange, and the former holders of the shares exchanged pursuant to the plan of exchange shall be entitled only to the exchange rights provided in the articles of exchange or to their rights of dissent under Section 25.10 of this Act. When a share exchange takes effect, the acquiring domestic or foreign entity or entities of the shares to be acquired and exchanged in the share exchange shall be entitled to all rights, title, and interests with respect to the shares so acquired and exchanged subject to the provisions in the articles of exchange.

[TRLPA 2.11]

(h) . . .

(3) . . . When an interest

exchange takes effect as provided in the plan of exchange, the partnership interests of each domestic limited partnership that are to be acquired pursuant to the plan of exchange shall be deemed to have been exchanged as provided in the plan of exchange and the former holders of the partnership interests exchanged pursuant to the plan of exchange shall be entitled only to the exchange rights provided in the plan of exchange and the acquiring domestic or foreign limited partnership or other entity or entities shall be entitled to all rights, title, and interests with respect to the partnership interests so acquired and exchanged subject to the provisions in the plan of exchange.

[TRPA 9.03]

(b) . . . When an interest exchange takes effect as provided in the plan of exchange:

(1) the partnership interest of each domestic partnership that is to be acquired under the plan of exchange is considered exchanged as provided in the plan of exchange;

(2) the former holders of the partnership interests exchanged under the plan of exchange are entitled only to the exchange rights provided in the plan of exchange; and

(3) the acquiring domestic or foreign partnership or other entity or entities are entitled to all rights, title, and interest with respect to the partnership interests so acquired and exchanged, subject to the provisions in the plan of exchange.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.051. Section 10.052 and the source laws provide that the plan of exchange contains the terms and conditions of the exchange. The certificate of exchange only contains certain minimum information. The Texas Business Corporation Act and Texas Real Estate Investment Trust Act refer to the

articles of exchange, rather than the plan of exchange, for the rights of holders or the acquiring entity. The revised law elects to refer to the plan of exchange for rights of owners, members, or the acquiring entity and not the certificate of exchange.

Revised Law

Sec. 10.056. SPECIAL PROVISIONS APPLYING TO PARTNERSHIPS.
To effect an interest exchange:

(1) the partnership agreement of each domestic partnership whose partnership interests are to be acquired pursuant to the plan of exchange must authorize the partnership interest exchange adopted by the partnership;

(2) each domestic partnership whose partnership interests are to be acquired under the plan of exchange must approve the plan of exchange in the manner prescribed by its partnership agreement; and

(3) each acquiring domestic partnership must take all actions that may be required by its partnership agreement in order to effect the exchange. (TRLPA 2.11(h) (part); TRPA 9.03(a).)

Source Law

[TRLPA 2.11]

(h) One or more domestic or foreign limited partnerships or other entities may adopt a plan of exchange by which a domestic or foreign limited partnership or other entity acquires all of the outstanding partnership interests of one or more domestic limited partnerships in exchange for cash, securities, or other property of the acquiring domestic or foreign limited partnership or other entity, if:

(1) the partnership agreement of each domestic limited partnership the partnership interests of which are to be acquired pursuant to the plan of exchange contains provisions that authorize the partnership interest exchange provided for in the plan of exchange adopted by the limited partnership, and . . .

(2) each domestic limited partnership the partnership interests of which are to be acquired pursuant to the plan of exchange approves the plan of exchange in the manner prescribed in its partnership agreement; and

(3) each acquiring domestic or foreign limited partnership or other entity takes all action that may be required by the laws of the state or country under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange. . . .

[TRPA 9.03]

(a) One or more domestic or foreign partnerships may adopt a plan of exchange by which a domestic or foreign partnership or other entity acquires all of the outstanding partnership interests of one or more domestic partnerships in exchange for cash or securities of the acquiring domestic or foreign partnership or other entity, if:

(1) the partnership agreement of each domestic partnership whose partnership interests are to be acquired pursuant to the plan of exchange authorizes the partnership interest exchange adopted by the partnership, and if one or more foreign partnerships or other entities is to issue shares or other interests as part of the plan of exchange, the issuance of those shares or other interests is either permitted by the laws under which that foreign partnership or other entity is formed or not inconsistent with those laws;

(2) each domestic or foreign partnership, the partnership interests of which are to be acquired under the plan of exchange, approves the plan of exchange in the manner prescribed in its partnership agreement; and

(3) each acquiring domestic or foreign partnership or other entity takes all action that may be required by the laws of the state under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange.

Revisor's Note

No substantive change is intended.

[Sections 10.057-10.100 reserved for expansion]

SUBCHAPTER C. CONVERSIONS

Revised Law

Sec. 10.101. CONVERSION OF DOMESTIC ENTITIES. (a) A domestic entity may convert into a different type of domestic entity or a non-code organization by adopting a plan of conversion.

(b) To effect a conversion, the converting entity must act on and the owners or members of the domestic entity must approve a plan of conversion in the manner prescribed by this code for the approval of conversions by the domestic entity or, if not prescribed by this code, in the same manner as prescribed by this code for the adoption and approval of a plan of merger by the domestic entity when the domestic entity does not survive the merger.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) A conversion may not take effect if the conversion is prohibited by or inconsistent with the laws of the converted entity's jurisdiction of formation, and the formation, incorporation, or organization of the converted entity under the plan of conversion must be effected in compliance with those laws pursuant to the plan of conversion.

(e) At the time a conversion takes effect, each owner of the converting entity, other than those who receive payment of their ownership or membership interest under any applicable provisions of this code relating to dissent and appraisal, has, unless otherwise agreed to by that owner or member, an ownership or membership interest in, and is the owner or member of, the converted entity.

(f) A domestic entity may not convert under this section if an owner or member of the domestic entity, as a result of the conversion, becomes personally liable, without the consent of the owner or member, for a liability or other obligation of the converted entity. (TBCA 5.17.A (part); TLLCA 10.08.A (part); TRLPA 2.15(a) (part); TRPA 9.01(a), (b), 9.05(a) (part).)

Source Law

[TBCA 5.17]

A. A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

(1) the converting entity acts on and its shareholders approve a plan of conversion in the manner prescribed by Article 5.03 of this Act as if the conversion were a merger to which the converting entity were a party and not the survivor;

(2) the conversion (a) is

permitted by, or not inconsistent with, the laws of the state or country in which the converted entity is to be incorporated, formed, or organized, and (b) the incorporation, formation, or organization of the converted entity is effected in compliance with such laws;

(3) at the time the conversion becomes effective, each shareholder of the converting entity (other than those who receive payment of their shares under Article 5.12 of this Act) will, unless otherwise agreed to by that shareholder, own an equity interest or other ownership or security interest in, and be a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) no shareholder of the domestic corporation will, as a result of the conversion, become personally liable, without the shareholder's consent, for the liabilities or obligations of the converted entity; and

[(5) the converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.]

[TLLCA 10.08]

A. A domestic limited liability company may adopt a plan of conversion and convert to a foreign limited liability company or any other entity if:

(1) the converting entity acts on and its members approve a plan of conversion in the manner prescribed by Article 10.01 of this Act as if the conversion were a merger to which the converting entity were a party and not the survivor;

(2) the conversion is permitted by, or not inconsistent with, the laws of the state or country in which the converted entity is to be incorporated, formed, or organized, and the incorporation, formation, or organization of the converted entity is effected in compliance with such laws;

(3) at the time the conversion becomes effective, each member of the converting entity will, unless otherwise

agreed to by that member, own an equity interest or other ownership or security interest in, and be a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) no member of the domestic limited liability company will, as a result of the conversion, become personally liable, without the member's consent, for the liabilities or obligations of the converted entity; and

[(5) the converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.]

[TRLPA 2.15]

(a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

(1) the converting entity acts on and its partners approve a plan of conversion in the manner prescribed by Section 2.11 of this Act as if the conversion were a merger to which the converting entity were a party and not the survivor;

(2) the conversion is permitted by, or not inconsistent with, the laws of the state or country in which the converted entity is to be incorporated, formed, or organized and the incorporation, formation, or organization of the converted entity is effected in compliance with such laws;

(3) at the time the conversion becomes effective, each partner of the converting entity will, unless otherwise agreed to by that partner, own an equity interest or other ownership or security interest in, and be a shareholder, partner, member, owner or other security holder of, the converted entity;

(4) no limited partner of the domestic limited partnership will, as a result of the conversion, become personally liable, without the limited partner's consent, for the liabilities or obligations of the converted entity; and

[(5) the converted entity shall be

incorporated, formed, or organized as part of or pursuant to the plan of conversion.]

[TRPA 9.01]

(a) General to Limited Partnership. A partnership that is not a limited partnership may convert, with the consent of a majority-in-interest of the partners, to a domestic or foreign limited partnership by properly filing a certificate of limited partnership in the state in which the limited partnership is to be formed. If the limited partnership is formed under the law of this state, in addition to other matters required, the certificate must state:

(1) that the partnership is converting from a partnership that is not a limited partnership to a limited partnership;

(2) the name or names of the partnership before the conversion to a limited partnership;

(3) the names of the general partners before the conversion;

(4) the state in which the partnership was organized before conversion;

(5) the change in name required, if any, in connection with the operation of the partnership as a limited partnership in this state; and

(6) the effective date of the conversion if different from the date the certificate is filed.

If a partnership that is not a limited partnership converts to a limited partnership, a partner who did not consent to the conversion is considered to be a partner who has withdrawn from the partnership effective immediately before the effective date of the conversion unless, within 60 days after the later of the effective date of the conversion or the date the partner receives actual notice of the conversion, the partner notifies the partnership in writing of the partner's desire not to withdraw. A withdrawal under the described circumstances is not a wrongful withdrawal.

(b) Limited to General. A domestic or foreign limited partnership may convert, on

the affirmative vote of a majority-in-interest of the partners, to a partnership that is not a limited partnership by:

(1) cancelling its certificate of limited partnership in the state of formation or otherwise complying with the provisions for terminating the existence of the limited partnership under that state's law as of the date that partnership's existence as a limited partnership is to cease;

(2) amending its partnership agreement to reflect its change in status and any change in name required to comply with this Act; and

(3) stating the effective date of the conversion in the partnership agreement if different from the date of the cancellation of the limited partnership certificate.

If a limited partnership converts to a partnership that is not a limited partnership, a partner who did not consent to the conversion is considered to be a partner who has withdrawn from the limited partnership effective immediately before the effective date of the conversion unless, within 60 days after the later of the effective date of the conversion or the date the partner receives actual notice of the conversion, the partner notifies the partnership in writing of the partner's desire not to withdraw. A withdrawal under the described circumstances is not a wrongful withdrawal.

[TRPA 9.05]

(a) A domestic partnership may adopt a plan of conversion and convert to a foreign partnership or any other entity if:

(1) the converting entity acts on and its partners approve a plan of conversion in the manner prescribed by Section 9.02 as if the conversion were a merger to which the converting entity were a party and not the survivor;

(2) the conversion is permitted by, or not inconsistent with, the laws of the

state or country in which the converted entity is to be incorporated, formed, or organized and the incorporation, formation, or organization of the converted entity is effected in compliance with such laws;

(3) at the time the conversion becomes effective, each partner of the converting entity will, unless otherwise agreed to by that partner, own an equity interest or other ownership or security interest in, and be a shareholder, partner, member, owner, or other security holder of, the converted entity; and

[(4) the converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.]

Revisor's Note

In 1997, the Texas Business Corporation Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, and Texas Real Estate Investment Trust Act were amended to create a new transaction referred to as a "conversion." A conversion is nothing more than a statutory mechanism to allow an entity to convert from one form to another without having to go through the artificial process of merging into an entity created solely to effect the conversion. Sections 10.101-10.107 codify these provisions and make them applicable to all domestic entities, other than unincorporated nonprofit associations. Section 10.108, however, prohibits the conversion of a domestic nonprofit corporation into a for-profit entity. In order to standardize the conversion provisions, the special provisions of Section 9.01, Texas Revised Partnership Act, that allow a conversion of a limited partnership to a general partnership and vice versa have been eliminated as unnecessary and redundant.

Revised Law

Sec. 10.102. CONVERSION OF NON-CODE ORGANIZATIONS. (a) A non-code organization may convert into a domestic entity by adopting a plan of conversion as provided by this section.

(b) To effect a conversion, the non-code organization must take any action that may be required for a conversion under the

laws of the organization's jurisdiction of formation and the organization's governing documents.

(c) The conversion must be permitted by the laws under which the non-code organization is incorporated or organized or by its governing documents, which may not be inconsistent with the laws of the jurisdiction in which the non-code organization is incorporated or organized. (TBCA 5.17.B; TLLCA 10.08.B; TRLPA 2.15(b); TRPA 9.05(b).)

Source Law

[TBCA 5.17]

B. Any foreign corporation or other entity may adopt a plan of conversion and convert to a domestic corporation if:

(1) the conversion is permitted by the laws of the state or country in which the foreign corporation is incorporated, if a foreign corporation is converting;

(2) the conversion is either permitted by the laws under which the other entity is formed or organized or by the constituent documents of the other entity that are not inconsistent with the laws of the state or country in which the other entity is formed or organized, if another entity is converting; and

(3) the converting entity takes all action that may be required by the laws of the state or country under which it is incorporated, formed, or organized and by its constituent documents to effect the conversion.

[TLLCA 10.08]

B. Any foreign limited liability company or other entity may adopt a plan of conversion and convert to a domestic limited liability company if:

(1) the conversion is permitted by the laws of the state or country in which the foreign limited liability company is incorporated, formed, or organized, if a foreign limited liability company is converting;

(2) the conversion is either permitted by the laws under which the other entity is incorporated, formed, or organized or by the constituent documents of the other

entity that are not inconsistent with the laws of the state or country in which the other entity is incorporated, formed, or organized, if another entity is converting; and

(3) the converting entity takes all action that may be required by the laws of the state or country under which it is incorporated, formed, or organized and by its constituent documents to effect the conversion.

[TRLPA 2.15]

(b) Any foreign limited partnership or other entity may adopt a plan of conversion and convert to a domestic limited partnership if:

(1) the conversion is permitted by the laws of the state or country in which the foreign limited partnership is formed, if a foreign limited partnership is converting;

(2) the conversion is either permitted by the laws under which the other entity is formed or organized or by the constituent documents of the other entity that are not inconsistent with the laws of the state or country in which the other entity is formed or organized, if another entity is converting; and

(3) the converting entity takes all action that may be required by the laws of the state or country under which it is incorporated, formed, or organized and by its constituent documents to effect the conversion.

[TRPA 9.05]

(b) Any foreign partnership or other entity may adopt a plan of conversion and convert to a domestic partnership if:

(1) the conversion is permitted by the laws of the state or country in which the foreign partnership is incorporated, if a foreign partnership is converting;

(2) the conversion is either permitted by the laws under which the other entity is formed or organized or by the constituent documents of the other entity

that are not inconsistent with the laws of the state or country in which the other entity is formed or organized, if another entity is converting; and

(3) the converting entity takes all action that may be required by the laws of the state or country under which it is incorporated, formed, or organized and by its constituent documents to effect the conversion.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.101.

Revised Law

Sec. 10.103. PLAN OF CONVERSION: REQUIRED PROVISIONS. (a) A plan of conversion must include:

- (1) the name of the converting entity;
- (2) the name of the converted entity;
- (3) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (4) a statement of the type of entity that the converted entity is to be and the converted entity's jurisdiction of formation;
- (5) the manner and basis of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity;
- (6) any certificate of formation required to be filed under this code if the converted entity is a filing entity; and
- (7) the certificate of formation or similar organizational document of the converted entity if the converted entity is not a filing entity.

(b) An item required by Subsection (a)(6) or (7) may be included in the plan of conversion by an attachment or exhibit to the plan. (TBCA 5.17.C; TLLCA 10.08.C; TRLPA 2.15(c); TRPA 9.05(c).)

Source Law

[TBCA 5.17]

C. A plan of conversion shall set forth:

- (1) the name of the converting entity and the converted entity;
- (2) a statement that the converting entity is continuing its existence in the organizational form of the converted

entity;

(3) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) the manner and basis of converting the shares or other evidences of ownership of the converting entity into shares or other evidences of ownership or securities of the converted entity, or any combination thereof;

(5) in an attachment or exhibit, the articles of incorporation of the domestic corporation, if the converted entity is a domestic corporation; and

(6) in an attachment or exhibit, the articles of incorporation or other organizational documents of the converted entity, if the converted entity is not a domestic corporation.

[TLLCA 10.08]

C. A plan of conversion shall set forth:

(1) the name of the converting entity and the converted entity;

(2) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) the manner and basis of converting the membership interests or other evidences of ownership of the converting entity into membership interests or other evidences of ownership or securities of the converted entity, or any combination thereof;

(5) in an attachment or exhibit, the articles of organization of the domestic limited liability company, if the converted entity is a domestic limited liability company; and

(6) in an attachment or exhibit,

the articles of organization or other organizational documents of the converted entity, if the converted entity is not a domestic limited liability company.

[TRLPA 2.15]

(c) A plan of conversion shall set forth:

(1) the name of the converting entity and the converted entity;

(2) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) the manner and basis of converting the partnership interests, shares, or other evidences of ownership of the converting entity into partnership interests, shares, or other evidences of ownership or securities of the converted entity, or any combination thereof;

(5) in an attachment or exhibit, the certificate of limited partnership of the domestic limited partnership, if the converted entity is a domestic limited partnership; and

(6) in an attachment or exhibit, the certificate of limited partnership, articles of incorporation, or other organizational documents of the converted entity, if the converted entity is not a domestic limited partnership.

[TRPA 9.05]

(c) A plan of conversion shall set forth:

(1) the name of the converting entity and the converted entity;

(2) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) a statement as to the type of

entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) the manner and basis of converting the partnership interests, shares, or other evidences of ownership of the converting entity into partnership interests, shares, or other evidences of ownership or securities of the converted entity, or any combination thereof; and

(5) in an attachment or exhibit, the certificate of limited partnership, articles of incorporation, or other organizational documents of the converted entity, if the converted entity is not a domestic partnership.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.101.

Revised Law

Sec. 10.104. PLAN OF CONVERSION: PERMISSIVE PROVISIONS. A plan of conversion may include other provisions relating to the conversion that are not inconsistent with law. (TBCA 5.17.D; TLLCA 10.08.D; TRLPA 2.15(d); TRPA 9.05(d).)

Source Law

[TBCA 5.17]

D. A plan of conversion may set forth such other provisions relating to the conversion not inconsistent with law, including the initial bylaws and officers of the converted entity.

[TLLCA 10.08]

D. A plan of conversion may set forth such other provisions relating to the conversion not inconsistent with law, including the initial regulations of the converted entity.

[TRLPA 2.15]

(d) A plan of conversion may set forth such other provisions relating to the conversion not inconsistent with law, including the initial partnership agreement

of the converted entity if the converted entity is a partnership.

[TRPA 9.05]

(d) A plan of conversion may set forth such other provisions relating to the conversion not inconsistent with law, including the initial partnership agreement of the converted entity if the converted entity is a partnership.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.101. The revised law omits the unnecessary examples of types of provisions that may be included in the plan of conversion.

Revised Law

Sec. 10.105. EFFECTIVENESS OF CONVERSION. Except as otherwise provided by Subchapter B, Chapter 4, a conversion takes effect at the time provided by the plan of conversion, except that a conversion that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of conversion by the filing officer. (TBCA 5.19; TLLCA 10.10; TRLPA 2.15(f); TRPA 9.05(g).)

Source Law

[TBCA]

5.19.A. Except as otherwise provided by Article 10.03 of this Act, on the issuance of the certificate of conversion by the Secretary of State, the conversion of a converting entity shall be effective.

[TLLCA]

10.10.A. Except as otherwise provided by Article 9.03 of this Act, on the issuance of the certificate of conversion by the Secretary of State, the conversion of a converting entity shall be effective.

[TRLPA 2.15]

(f) Except as otherwise provided by Section 2.14 of this Act, on the issuance of the certificate of conversion by the secretary of state, the conversion of a converting entity shall be effective.

[TRPA 9.05]

(g) Except as otherwise provided by Section 9.06, on the issuance of the certificate of conversion by the secretary of state (or if a certificate of conversion need not be executed, as provided in the plan of merger), the conversion of a converting entity shall be effective.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.101. The revised law cross-references to the provisions in Subchapter B of Chapter 4 of the revised law, which generally permit delayed effectiveness of filing. The source laws also generally cross-reference to other provisions that permit delayed effectiveness of filings.

Revised Law

Sec. 10.106. GENERAL EFFECT OF CONVERSION. When a conversion takes effect:

(1) the converting entity continues to exist without interruption in the organizational form of the converted entity rather than in the organizational form of the converting entity;

(2) all rights, title, and interests to all property owned by the converting entity continues to be owned, subject to any existing liens or other encumbrances on the property, by the converted entity in the new organizational form without:

(A) reversion or impairment;

(B) further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of the converting entity continue to be liabilities and obligations of the converted entity in the new organizational form without impairment or diminution because of the conversion;

(4) the rights of creditors or other parties with respect to or against the previous owners or members of the converting entity in their capacities as owners or members in existence when the conversion takes effect continue to exist as to those liabilities and obligations and may be enforced by the creditors and obligees as if a conversion had not occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's owners or members in their capacities as owners or members may be continued by or against the converted entity in the new organizational form and by or against the previous owners or members without a need for substituting a party;

(6) the ownership or membership interests of the converting entity that are to be converted into ownership or membership interests of the converted entity as provided in the plan of conversion are converted as provided by the plan, and if the converting entity is a domestic entity, the former owners or members of the domestic entity are entitled only to the rights provided in the plan of conversion or a right of dissent and appraisal under this code;

(7) if, after the conversion takes effect, an owner or member of the converted entity as an owner or member is liable for the liabilities or obligations of the converted entity, the owner or member is liable for the liabilities and obligations of the converting entity that existed before the conversion took effect only to the extent that the owner or member:

(A) agrees in writing to be liable for the liabilities or obligations;

(B) was liable, before the conversion took effect, for the liabilities or obligations; or

(C) by becoming an owner or member of the converted entity, becomes liable under other applicable law for the existing liabilities and obligations of the converted entity; and

(8) if the converted entity is a non-code organization, the converted entity is considered to have:

(A) appointed the secretary of state in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners or members of the converting domestic entity; and

(B) agreed that the converted entity will promptly pay the dissenting owners or members of the converting domestic entity the amount, if any, to which they are entitled under this code. (TBCA 5.20.A (part); TLLCA 10.11; TRLPA 2.15(g); TRPA 9.05(h).)

Source Law

[TBCA 5.20]

A. When a conversion of a converting entity takes effect:

(1) the converting entity shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(2) all rights, title, and interests to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new organizational form without

reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of the converting entity shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(4) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the converting entity in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion had not occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's interest holders or owners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior interest holders or owners, as the case may be, without any need for substitution of parties;

(6) the shares and other evidences of ownership in the converting entity that are to be converted into shares, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and if the converting entity is a domestic corporation, the former holders of shares in the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to their rights under Article 5.11 of this Act;

(7) if, after the effectiveness of the conversion, a shareholder, partner, member, or other owner of the converted entity would be liable under applicable law, in such capacity, for the debts or obligations of the converted entity, such

shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner: (a) agreed in writing to be liable for such debts or obligations, (b) was liable under applicable law, prior to the effectiveness of the conversion, for such debts or obligations, or (c) by becoming a shareholder, partner, member, or other owner of the converted entity, becomes liable under applicable law for existing debts and obligations of the converted entity;

(8) if the converted entity is a foreign corporation or other entity, such converted entity shall be deemed to: (a) appoint the Secretary of State in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation, and (b) agree that it will promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under Article 5.11 of this Act; and

. . .

[TLLCA]

10.11.A. When a conversion of a converting entity takes effect:

(1) the converting entity shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(2) all rights, title, and interests to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of the converting entity shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(4) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the converting entity in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if such conversion shall not have occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's interest holders or owners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior interest holders or owners, as the case may be, without any need for substitution of parties;

(6) the membership interests and other evidences of ownership in the converting entity that are to be converted into membership interests, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and if the converting entity is a domestic limited liability company, the former holders of membership interests in the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion;

(7) if, after the effectiveness of the conversion, a shareholder, partner, member, or other owner of the converted entity would be liable under applicable law, in such capacity, for the debts or obligations of the converted entity, such shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion

takes effect only to the extent that such shareholder, partner, member, or other owner:

(a) agreed in writing to be liable for such debts or obligations;

(b) was liable under applicable law, prior to the effectiveness of the conversion, for such debts or obligations; or

(c) by becoming a shareholder, partner, member, or other owner of the converted entity, becomes liable under applicable law for existing debts and obligations of the converted entity; and

(8) if the converted entity is a foreign limited liability company or other entity, such converted entity shall be deemed to appoint the Secretary of State in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited liability company.

[TRLPA 2.15]

(g) When a conversion of a converting entity takes effect:

(1) the converting entity shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(2) all rights, title, and interests to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of the converting entity shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(4) all rights of creditors or

other parties with respect to or against the prior interest holders or other owners of the converting entity in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's interest holders or owners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior interest holders or owners, as the case may be, without any need for substitution of parties;

(6) the partnership interests, shares, and other evidences of ownership in the converting entity that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and if the converting entity is a domestic limited partnership, the former holders of shares in the domestic limited partnership shall be entitled only to the rights provided in the plan of conversion;

(7) if, after the effectiveness of the conversion, a shareholder, partner, member, or other owner of the converted entity would be liable under applicable law in such capacity for the debts or obligations of the converted entity, such shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:

(A) agreed in writing to be liable for such debts or obligations;

(B) was liable under applicable law, prior to the effectiveness of the conversion, for such debts or obligations; or

(C) by becoming a shareholder, partner, member, or other owner of the converted entity, becomes liable under applicable law for existing debts and obligations of the converted entity;

(8) if the converted entity is a foreign limited partnership or other entity, such converted entity shall be deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited partnership; and

(9) if the converting limited partnership is a domestic limited partnership, the provisions of Section 2.11 of this Act shall apply as if the converted entity were the survivor of a merger with the converting entity.

[TRPA 9.05]

(h) When a conversion of a converting entity takes effect:

(1) the converting entity shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(2) all rights, title, and interests to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of the converting entity shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(4) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the converting entity in their capacities as such

in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if such conversion shall not have occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's interest holders or owners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior interest holders or owners, as the case may be, without any need for substitution of parties;

(6) the partnership interests, shares, and other evidences of ownership in the converting entity that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and if the converting entity is a domestic partnership, the former holders of shares in the domestic partnership shall be entitled only to the rights provided in the plan of conversion;

(7) if, after the effectiveness of the conversion, a shareholder, partner, member, or other owner of the converted entity would be liable under applicable law in such capacity for the debts or obligations of the converted entity, such shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:

(A) agreed in writing to be liable for such debts or obligations;

(B) was liable under applicable law, prior to the effectiveness of the conversion, for such debts or obligations; or

(C) by becoming a shareholder, partner, member, or other owner of the converted entity, becomes liable under

applicable law for existing debts and obligations of the converted entity;

(8) if the converted entity is a foreign partnership or other entity, such converted entity shall be deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic partnership; and

(9) if the converting partnership is a domestic partnership, the provisions of Section 9.02 of this Act shall apply as if the converted entity were the survivor of a merger with the converting entity.

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 10.101.

Revised Law

Sec. 10.107. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP CONVERSIONS. (a) If a partnership is formed under a plan of conversion under this code, the existence of the partnership as a partnership begins when the conversion takes effect, and the owners or members designated to become the partners under the plan of conversion become the partners at that time.

(b) The partnership agreement of a domestic partnership that is converting must contain provisions that authorize the conversion provided for in the plan of conversion adopted by the partnership.

(c) A domestic partnership that is converting must approve the plan of conversion in the merger provided in its partnership agreement. (TRLPA 2.01(b) (part), 2.15(a) (part); TRPA 2.02(d), 9.05(a) (part).)

Source Law

[TRLPA 2.01]

(b) . . . In the case of a limited partnership being formed under a plan of merger or a plan of conversion under Section 2.11 or 2.15 of this Act, the existence of the limited partnership as a limited partnership begins on the effectiveness of the merger or the conversion, as applicable, and the persons to be partners shall become general or limited partners, as applicable, as of that time.

[TRLPA 2.15]

(a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

(1) the converting entity acts on and its partners approve a plan of conversion in the manner prescribed by Section 2.11 of this Act as if the conversion were a merger to which the converting entity were a party and not the survivor;

. . .

[TRPA 2.02]

(d) Partnership Resulting from Merger or Conversion. In the case of a new partnership being formed pursuant to a plan of merger or a plan of conversion under Article IX of this Act, the existence of the partnership as a partnership shall begin on the effectiveness of the merger or the conversion, as the case may be, and the persons to be partners shall become partners as of that time.

[TRPA 9.05]

(a) A domestic partnership may adopt a plan of conversion and convert to a foreign partnership or any other entity if:

(1) the converting entity acts on and its partners approve a plan of conversion in the manner prescribed by Section 9.02 as if the conversion were a merger to which the converting entity were a party and not the survivor;

. . .

Revisor's Note

No substantive change is intended, except that the revised law clarifies how a conversion is approved by the partners. The source law specified that the conversion must be approved in the same manner as a plan of merger. This incorporation of the plan of merger approval process created some ambiguities, which are resolved by delineating the approval process in Section 10.107.

Revised Law

Sec. 10.108. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION CONVERSIONS. A domestic nonprofit corporation may not convert into a for-profit entity. (New.)

Revisor's Note

No substantive change is intended. The Texas Non-Profit Corporation Act does not have any conversion provisions, although the same substantive effect of a conversion could be accomplished through a merger. Section 10.108 continues the public policy of not permitting a nonprofit corporation to convert into a for-profit entity, in a manner parallel to the merger provisions.

[Sections 10.109-10.150 reserved for expansion]

SUBCHAPTER D. CERTIFICATE OF MERGER, EXCHANGE,
OR CONVERSION

Revised Law

Sec. 10.151. CERTIFICATE OF MERGER AND EXCHANGE. (a) After approval of a plan of merger or a plan of exchange as provided by this code, a certificate of merger, which may also include an exchange, or a certificate of exchange, as applicable, must be filed for a merger or interest exchange to become effective if:

(1) for a merger:

(A) any domestic entity that is a party to the merger is a filing entity; or

(B) any domestic entity to be created under the plan of merger is a filing entity; or

(2) for an exchange, an ownership or membership interest in any filing entity is to be acquired in the interest exchange.

(b) If a certificate of merger or exchange is required to be filed in connection with an interest exchange or a merger, other than a merger under Section 10.006, the certificate must be signed on behalf of each domestic entity and non-code organization that is a party to the merger or exchange by an officer or other authorized representative and must include:

(1) the plan of merger or exchange or a statement certifying:

(A) the name of each domestic entity or non-code organization that is a party to the merger or exchange;

(B) the name of each domestic entity or non-code organization that is to be created by the plan of merger or exchange;

(C) the name of the jurisdiction in which each domestic entity or non-code organization named under Paragraph (A) or (B) is incorporated or organized;

(D) for a merger, the amendments or changes to

the certificate of formation of each filing entity that is a party to the merger, or if no amendments are desired to be effected by the merger, a statement to that effect;

(E) that the certificate of formation of each new filing entity to be created under the plan of merger or exchange is being filed with the certificate of merger or exchange;

(F) that a signed plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization, and the address of each principal place of business; and

(G) that a copy of the plan of merger or exchange will be on written request furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger or exchange and, for a merger with multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(2) if approval of the owners or members of any domestic entity that was a party to the plan of merger or exchange is not required by this code, a statement to that effect; and

(3) a statement that the plan of merger or exchange has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger or exchange and by the governing documents of those organizations.

(c) A certificate of merger may also constitute a certificate of exchange if it contains the information required for a certificate of exchange. (TBCA 5.04.A; TLLCA 10.03.A (part), B, 10.06.A, B (part); TNPCA 5.04.A; TREITA 23.40(A); TRLPA 2.11(d) (part), (e), (h) (part); TRPA 9.02(d), 9.03(b) (part).)

Source Law

[TBCA 5.04]

A. If a plan of merger or exchange has been approved in accordance with Article 5.03 of this Act and has not been abandoned, or approved by the board of directors if shareholder approval is not required under that Article, articles of merger or exchange shall be executed on behalf of each domestic or foreign corporation or other entity that is a party to the merger or exchange by an officer or other duly authorized representative thereof and shall set forth:

(1) The plan of merger or exchange

or statement certifying the following:

(a) the name and state of incorporation or organization of each domestic or foreign corporation or other entity that is a party to the plan of merger or exchange or that is to be created thereby;

(b) that a plan of merger or exchange has been approved;

(c) in the case of a merger, such amendments or changes in the articles of incorporation of each domestic surviving corporation, or if no such amendments are desired to be effected by the merger, a statement to that effect;

(d) that the articles of incorporation of each new domestic corporation to be created pursuant to the terms of the plan of merger are being filed with the Secretary of State with the articles of merger or exchange;

(e) that an executed plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic or foreign corporation or other entity, stating the address thereof; and

(f) that a copy of the plan of merger or exchange will be furnished by each surviving, acquiring, or new domestic or foreign corporation or other entity, on written request and without cost, to any shareholder of each domestic corporation that is a party to or created by the plan of merger or exchange and, in the case of a merger with multiple surviving domestic or foreign corporations or other entities, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

(2) If shareholder approval is not required by Article 5.03 of this Act, a statement to that effect.

(3) As to each corporation the approval of whose shareholders is required, the number of shares outstanding, and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or

series.

(4) As to each corporation the approval of whose shareholders is required, the number of shares, not entitled to vote only as a class, voted for and against the plan, respectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series voted for and against the plan, respectively.

(5) As to each acquiring domestic or foreign corporation or other entity in a plan of exchange, a statement that the plan and performance of its terms were duly authorized by all action required by the laws under which it was incorporated or organized and by its constituent documents.

(6) As to each foreign corporation or other entity that is a party to the merger, a statement that the approval of the plan of merger was duly authorized by all action required by the laws under which it was incorporated or organized and by its constituent documents.

[TLLCA 10.03]

A. After a plan of merger has been approved by each of the limited liability companies or other entities that is a party to the plan of merger, articles of merger shall be executed The articles of merger must include:

(1) the plan of merger or statement certifying the following:

(a) the name and state of incorporation or organization of each domestic or foreign limited liability company or other entity that is a party to the plan of merger or that is to be created thereby;

(b) that a plan of merger has been approved;

(c) such amendments or changes in the articles of organization of each domestic surviving limited liability company, or if no such amendments are desired to be effected by the merger, a statement to that effect;

(d) that the articles of

organization of each new domestic limited liability company to be created pursuant to the terms of the plan of merger are being filed with the Secretary of State with the articles of merger;

(e) that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign limited liability company or other entity, stating the address thereof; and

(f) that a copy of the plan of merger will be furnished by each surviving or new domestic or foreign limited liability company or other entity, on written request and without cost, to any member of each domestic limited liability company that is a party to or created by the plan of merger and, in the case of a merger with multiple surviving domestic or foreign limited liability companies or other entities, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding; and

(2) as to each domestic or foreign limited liability company or other entity that is a party to the plan of merger, a statement that the plan of merger was authorized by all action required by the laws under which it was formed or organized or by its constituent documents.

B. The original of the articles of merger and a number of copies equal to the number of surviving and new domestic or foreign limited liability companies and other entities that are a party to the plan of merger or that will be created by its terms shall be delivered to the Secretary of State. Unless the Secretary of State finds that the articles of merger do not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law or if the plan of merger provides that one or more of the surviving, new, or acquiring domestic or foreign limited liability companies or other entities will be responsible for the payment of all of such fees and franchise taxes and that all of such surviving, new, or acquiring domestic or

foreign limited liability companies and other entities will be obligated to pay such fees and franchise taxes if the same are not timely paid, the Secretary of State shall:

(1) certify that the articles of merger have been filed in the Secretary of State's office by endorsing on the original the word "Filed" and the date of the filing;

(2) file and index the endorsed articles of merger; and

(3) issue a certificate of merger, together with a copy of the articles affixed to the certificate, to each surviving or new domestic or foreign limited liability company or other entity that is a party to the plan of merger or that is created by the merger, or to its respective representatives.

[TLLCA 10.06]

A. One or more domestic or foreign limited liability companies or other entities may adopt a plan of exchange by which an entity acquires all of the outstanding limited liability company interests of one or more domestic limited liability companies or all of the outstanding interests, stock, partnership interests, or other ownership interests in one or more other entities in exchange for cash or securities of the acquiring entity if:

(1) each domestic limited liability company, the interests of which are to be acquired under the plan of exchange, approves the plan of exchange by majority vote or consent of its members or in a manner prescribed in its regulations; and

(2) each acquiring domestic or foreign limited liability company or other entity takes all action that may be required by the laws of the state or country under which it was formed and as required by its constituent documents to effect the exchange.

B. A filing with the Secretary of State is not necessary to evidence or effect the interest exchange with respect to a domestic limited liability company that is a party to the interest exchange. . . .

[TNPCA 5.04]

A. Upon such approval, articles of merger or articles of consolidation shall be signed on behalf of each corporation by one of its officers and shall set forth:

(1) The plan of merger or the plan of consolidation.

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

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

[TREITA 23.40]

(A) If a plan of merger or exchange has been approved in accordance with Section 23.30 of this Act and has not been abandoned, or approved by the trust managers if shareholder approval is not required under that Section, articles of merger or exchange shall be executed on behalf of each domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the plan of merger or exchange by an officer or other duly

authorized representative of that entity and shall set forth:

(1) the plan of merger or exchange or statement certifying the following:

(a) the name and state of incorporation or organization of each domestic or foreign corporation, real estate investment trust, partnership, or other entity that is a party to the plan of merger or exchange or that is to be created by the plan of merger or exchange;

(b) that a plan of merger or exchange has been approved;

(c) in the case of a merger, the amendments or changes in the declaration of trust of each domestic surviving real estate investment trust or, if no amendments are to be effected by the merger, a statement to that effect;

(d) the declaration of trust of each new domestic real estate investment trust to be created pursuant to the terms of the plan of merger;

(e) that an executed plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic or foreign corporation, real estate investment trust, partnership, or other entity, stating the address of that entity; and

(f) that a copy of the plan of merger or exchange will be furnished by each surviving, acquiring, or new domestic or foreign corporation, real estate investment trust, partnership, or other entity, on written request and without cost, to any shareholder, creditor, or other obligee of each domestic real estate investment trust that is a party to or created by the plan of merger or exchange;

(2) if shareholder approval is not required by Section 23.30 of this Act, a statement to that effect;

(3) for each real estate investment trust the approval of whose shareholders is required, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a

class, the designation and number of outstanding shares of each such class or series;

(4) for each real estate investment trust the approval of whose shareholders is required, the number of shares not entitled to vote only as a class, voted for and against the plan, respectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series voted for and against the plan, respectively;

(5) for each acquiring domestic or foreign corporation, real estate investment trust, partnership, or other entity in a plan of exchange, a statement that the plan and performance of its terms were duly authorized by all action required by the laws under which it was incorporated or organized and by its constituent documents; and

(6) for each domestic or foreign corporation, or other entity that is a party to the plan of merger, a statement that the approval of the plan of merger was duly authorized by all action required by the laws under which it was incorporated or organized and by its constituent documents.

[TRLPA 2.11]

(d) After a plan of merger has been approved by each of the limited partnerships or other entities that is a party to the plan of merger, a certificate of merger shall be executed . . . and shall set forth:

(1) the plan of merger or a statement certifying the following:

(A) the name and the state of incorporation, formation, or organization of each of the parties to the merger and the organizational form of each new or surviving limited partnership or other entity;

(B) that a plan of merger has been approved;

(C) any amendments or changes in the certificate of limited partnership of each surviving domestic limited partnership, or if no such amendments are desired to be effected by the merger, a statement to that

effect;

(D) the certificate of limited partnership of each new domestic limited partnership to be formed under the plan of merger;

(E) that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign limited partnership or other entity, stating the address thereof;

(F) that a copy or summary of the plan of merger has been or is being furnished to each partner in each domestic limited partnership that is a party to the merger at least 20 days before the merger is effective, unless waived by that partner, or that the domestic limited partnership has complied with the provisions of its partnership agreement regarding furnishing partners copies or summaries of the plan of merger or notices regarding the merger; and

(G) in the case of a merger with multiple surviving domestic or foreign limited partnerships or other entities, that a copy of the plan of merger will be furnished by each new or surviving domestic or foreign limited partnership or other entity, on written request and without cost, to any creditor or obligee of the parties to the merger at the time of the merger if the obligation is then outstanding; and

(2) as to each domestic or foreign limited partnership or other entity that is a party to the plan of merger, a statement that the plan of merger was duly authorized by all action required by the laws under which it was formed or organized and by its constituent documents.

(e) The original of the certificate of merger and such number of copies of the certificate equal to the number of surviving and new domestic or foreign limited partnerships and other entities that are a party to the plan of merger or that will be created by the terms thereof, shall be delivered to the secretary of state. An equal number of copies of the certificate of limited partnership of each domestic limited

partnership that is to be formed pursuant to the plan of merger shall also be delivered to the secretary of state with the articles of merger. Unless the secretary of state finds that a certificate of merger does not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law, or if the plan of merger (or a statement provided in lieu thereof) provides that one or more of the surviving or new domestic or foreign limited partnerships or other entities will be responsible for the payment of all fees and franchise taxes and that all of the surviving or new domestic or foreign limited partnerships and other entities will be obligated to pay the fees and franchise taxes if they are not timely paid, the secretary of state shall certify that the certificate of merger has been filed in the secretary of state's office by endorsing on the original the word "Filed" and the date of the filing, file and index the endorsed certificate of merger, and return the copy, similarly endorsed, to each surviving or new domestic or foreign limited partnership or other entity that is a party to the plan of merger or that is created thereby, or its or their respective representatives.

. . .

(h) . . .

(3) . . . No filing with the secretary of state shall be necessary in order to evidence or effect such interest exchange with respect to a domestic limited partnership that is a party to such interest exchange. . . .

[TRPA 9.02]

(d) Certificate of Merger. After a plan of merger has been approved by each of the partnerships or other entities that is a party to the plan of merger, unless the only parties to the merger are partnerships, a certificate of merger shall be executed on behalf of each partnership or other entity by at least one partner of each domestic partnership that is a party to the plan of merger and by a general partner, officer,

agent or other authorized representative of each other partnership or other entity that is a party to the plan of merger and shall set forth:

- (1) the plan of merger; and
- (2) for each domestic or foreign partnership or other entity that is a party to the plan of merger, a statement that the plan of merger was duly authorized by all action required by the laws under which it was formed or organized and by its constituent documents.

[TRPA 9.03]

(b) Filing with the secretary of state is not necessary to evidence or effect an interest exchange under this section for a domestic partnership that is a party to the interest exchange. . . .

Revisor's Note

Sections 10.151-10.156 set forth the general requirements for certificates of merger, exchange, and conversion. The information required to be contained in a certificate has been simplified and made consistent for all transactions. The revised law adopts the current approach in the Texas Business Corporation Act and has eliminated the outmoded requirement of the Texas Revised Partnership Act and Texas Non-Profit Corporation Act that a plan of merger be attached to the filing on the basis that this requirement has led to excessive paperwork at the secretary of state's office for minimal benefit. The revised law has also set forth procedures that are to be applicable where a party to a merger is not a "filing entity."

Existing law contains provisions that require articles of merger, exchange, or conversion to specify the number of shares outstanding, the number of shares entitled to vote, including the number of shares entitled to vote only as a class, and the number of shares that voted for and against the transaction. Other states, including in particular Delaware, do not require such detail. The revised law substitutes for

those provisions statements to the effect that the merger, exchange, or conversion has been approved in the manner required by the code. Filing procedures are consequently simplified.

The revised law eliminates the unnecessary paperwork of filing multiple copies of the certificate of merger or exchange required by existing law based on the number of surviving, new, or acquiring organizations that are parties to the plan of merger or exchange. The extra copies are no longer necessary under current practice. The revised law requires only one certificate of merger or certificate of exchange to be filed.

Section 10.151(a) of the revised law clarifies existing law by specifying when a certificate of merger must be filed in Texas.

The Texas Revised Limited Partnership Act requires a statement in the certificate of merger that the plan of merger or a summary thereof has been furnished to each partner at least 20 days before the merger is effective or otherwise as required by the partnership agreement. In order to standardize provisions, this Texas Revised Limited Partnership Act provision has been omitted. However, Section 10.009 requires a merger of a limited partnership to conform with the requirements of its partnership agreement.

The Texas Limited Liability Company Act, Texas Revised Partnership Act, and Texas Revised Limited Partnership Act do not require filing of articles of exchange for partnerships and limited liability companies. To standardize the provisions for all filing entities and to provide better public notice of the interest exchange, the revised law in Section 10.151(a) requires the filing of a certificate of exchange if interests in a filing entity, including a limited partnership or limited liability company, are acquired in the exchange.

Revised Law

Sec. 10.152. CERTIFICATE OF MERGER: SHORT FORM MERGER.

(a) The certificate of merger for a merger under Section 10.006

is required to be signed only by an officer or other authorized representative of the parent organization described by that section.

(b) Except as provided by Subsection (c), the certificate of merger must include:

(1) the name of the parent organization, the name of each subsidiary organization that is a party to the merger, and the jurisdiction of formation of each named organization;

(2) the number of outstanding ownership interests of each class or series of each subsidiary organization and the number and percentage of ownership interests of each class or series owned by the parent organization;

(3) a copy of the resolution of merger adopted by the governing authority of the parent organization authorizing the merger and the date of the adoption of the resolution;

(4) a statement that the resolution has been approved as required by the laws of the jurisdiction of formation of the parent organization and by its governing documents; and

(5) if any surviving organization is not a domestic entity, the address, including street number, if any, of its registered or principal office in the organization's jurisdiction of formation.

(c) If a plan of merger is required to be adopted by action of the parent organization under Section 10.006(c), the certificate of merger must include the information required by Section 10.151(b). (TBCA 5.16.B; TLLCA 10.05.B.)

Source Law

[TBCA 5.16]

B. The articles of merger shall be signed on behalf of the parent entity by an officer or other duly authorized representative of the parent entity and shall set forth:

(1) The name of the parent entity and the name of each subsidiary entity and the type of entity and respective jurisdiction under which each subsidiary entity is organized.

(2) The total number or percentage of outstanding shares, membership interests, or other ownership interests, identified by class, series, or group, and the number or percentage of shares, membership interests, or other ownership interests in each class, series, or group owned by the parent entity.

(3) A copy of the resolution or merger adopted by the parent entity in

accordance with the laws of its jurisdiction of organization or formation and its organizational or other constituent documents together with a statement that the resolution was so adopted and the date of the adoption thereof. If the parent entity does not own all the outstanding shares, membership interests, or other ownership interests of each class of each subsidiary entity that is a party to the merger, the resolution shall state the terms and conditions of the merger, including the cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any person or entity or any combination of the shares, obligations, evidences of ownership, rights, or other securities, to be used, paid or delivered by the surviving entity upon surrender of each share, membership interest, or other ownership interest of the subsidiary entity or entities not owned by the parent entity.

(4) If the surviving entity is a foreign corporation or other entity, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. If the surviving entity is a foreign corporation or other entity, on the merger taking effect the surviving entity is deemed to (a) appoint the Secretary of State of this state as its agent for service of process to enforce an obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger, and (b) agree that it will promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under this Article.

(5) If a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 5.03 of this Act, the information required by Section A of Article 5.04 of this Act.

[TLLCA 10.05]

B. The articles of merger must be

signed on behalf of the parent entity by a member, manager, officer, or other agent or representative authorized by (i) the organizational or other constituent documents of the parent entity, or (ii) resolutions adopted by the parent entity in accordance with the laws of its jurisdiction of organization or formation and the documents. The articles of merger must include:

(1) the name of the parent entity and the name of each respective subsidiary entity;

(2) for each entity listed in Subsection (1) of this Section, the type of entity and the respective jurisdiction under which the entity is formed or organized;

(3) the total number or percentage of membership interests, shares, or other ownership interests in each subsidiary entity, identified by class, series, or group, and the number or percentage of membership interests, shares, or other ownership interests in each class, series, or group owned by the parent entity;

(4) a copy of the resolution of merger adopted by the parent entity in accordance with the laws of its jurisdiction of organization or formation and its organizational or other constituent documents, together with a statement that the resolution was so adopted and the date of adoption;

(5) if the parent entity does not own all of the outstanding membership interest, shares, or other ownership interests of each subsidiary entity party to the merger, the resolution described in Subsection (4) of this Section must state the terms and conditions of the merger, including the securities, cash, or other property to be used, paid, or delivered by the surviving corporation on surrender of each membership interest, share, or other ownership interest of the subsidiary entity or entities not owned by the parent entity;

(6) if the surviving entity is a foreign limited liability company or other entity, the address, including street number,

if any, of its registered or principal office in the jurisdiction under whose laws it is governed; and

(7) if a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 10.01 of this Act, the information required by Section A of Article 10.03 of this Act.

Revisor's Note

Other than as described in the Revisor's Notes to Sections 10.006 and 10.151, no substantive change is intended.

Revised Law

Sec. 10.153. FILING OF CERTIFICATE OF MERGER OR EXCHANGE.

(a) If a certificate of merger or exchange is required to be filed, the certificate of merger or exchange must be filed in accordance with Chapter 4. The certificate of formation of each filing entity that is to be formed under a plan of merger must also be filed with the certificate of merger in accordance with Chapter 4. Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If a domestic real estate investment trust is a party to the merger or if an ownership interest in a domestic real estate investment trust is to be acquired in the interest exchange, the certificate of merger or exchange must be filed in accordance with Chapter 4 with the county clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located.

(c) If a domestic real estate investment trust is to be created under the plan of merger, the certificate of formation of the domestic real estate investment trust must also be filed with the certificate of merger in accordance with Chapter 4 with the county clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located. (TBCA 5.04.B, 5.16.C; TLLCA 10.03.B; TNPCA 5.04.B; TREITA 23.40(B); TRLPA 2.11(e); TRPA 9.02(e).)

Source Law

[TBCA 5.04]

B. The original of the articles of merger or exchange, and such number of copies of the articles equal to the number of surviving, new, and acquiring domestic or foreign corporations and other entities that are a party to the merger or exchange or that will be created by the terms thereof, shall be delivered to the Secretary of State. An

equal number of copies of the articles of incorporation of each domestic corporation that is to be incorporated pursuant to the plan of merger shall also be delivered to the Secretary of State with the articles of merger.

[TBCA 5.16]

C. The articles of merger shall be delivered to the Secretary of State and filed as provided by Sections B and C of Article 5.04 of this Act.

[TLLCA 10.03]

B. The original of the articles of merger and a number of copies equal to the number of surviving and new domestic or foreign limited liability companies and other entities that are a party to the plan of merger or that will be created by its terms shall be delivered to the Secretary of State. Unless the Secretary of State finds that the articles of merger do not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law or if the plan of merger provides that one or more of the surviving, new, or acquiring domestic or foreign limited liability companies or other entities will be responsible for the payment of all of such fees and franchise taxes and that all of such surviving, new, or acquiring domestic or foreign limited liability companies and other entities will be obligated to pay such fees and franchise taxes if the same are not timely paid, the Secretary of State shall:

(1) certify that the articles of merger have been filed in the Secretary of State's office by endorsing on the original the word "Filed" and the date of the filing;

(2) file and index the endorsed articles of merger; and

(3) issue a certificate of merger, together with a copy of the articles affixed to the certificate, to each surviving or new domestic or foreign limited liability company or other entity that is a party to the plan of merger or that is created by the merger,

or to its respective representatives.

[TNPCA 5.04]

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

[TREITA 23.40]

(B) The original of the articles of merger or exchange and the number of copies of the articles that is equal to the number of surviving, new, and acquiring domestic or foreign corporations, real estate investment trusts, partnerships, and other entities that are parties to the plan of merger or exchange or that will be created by the terms of the plan of merger or exchange thereof shall be filed with the county clerk in each county where the principal place of business of a Texas real estate investment trust that is a party to the merger or exchange is located.

[TRLPA 2.11]

(e) The original of the certificate of merger and such number of copies of the certificate equal to the number of surviving and new domestic or foreign limited partnerships and other entities that are a party to the plan of merger or that will be created by the terms thereof, shall be delivered to the secretary of state. An equal number of copies of the certificate of limited partnership of each domestic limited partnership that is to be formed pursuant to the plan of merger shall also be delivered to the secretary of state with the articles of

merger. Unless the secretary of state finds that a certificate of merger does not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law, or if the plan of merger (or a statement provided in lieu thereof) provides that one or more of the surviving or new domestic or foreign limited partnerships or other entities will be responsible for the payment of all fees and franchise taxes and that all of the surviving or new domestic or foreign limited partnerships and other entities will be obligated to pay the fees and franchise taxes if they are not timely paid, the secretary of state shall certify that the certificate of merger has been filed in the secretary of state's office by endorsing on the original the word "Filed" and the date of the filing, file and index the endorsed certificate of merger, and return the copy, similarly endorsed, to each surviving or new domestic or foreign limited partnership or other entity that is a party to the plan of merger or that is created thereby, or its or their respective representatives.

[TRPA 9.02]

(e) Filing. If a certificate of merger must be executed, the original of the certificate of merger and the number of copies of the certificate equal to the number of surviving and new domestic or foreign partnerships and other entities that are a party to the plan of merger or that will be created by its terms, shall be delivered to the secretary of state. Unless the secretary of state finds that a certificate of merger does not conform to law, then on receipt of all applicable filing fees and franchise taxes, if any, required by law, or if the plan of merger (or a statement provided in lieu thereof) provides that one or more of the surviving or new domestic or foreign partnerships or other entities that will be responsible for the payment of all the fees and franchise taxes and that all of the surviving or new domestic or foreign partnerships and other entities will be

obligated to pay the fees and franchise taxes if they are not timely paid, the secretary of state shall certify that the certificate of merger has been filed in the secretary of state's office by endorsing on the original the word "Filed" and the date of the filing, file and index the endorsed certificate of merger, and return the copy, similarly endorsed, to each surviving or new domestic or foreign partnership or other entity that is a party to the plan of merger or that is created thereby, or its or their respective representatives.

Revisor's Note

See revisor's note to Section 10.151.

Revised Law

Sec. 10.154. CERTIFICATE OF CONVERSION. (a) After approval of a plan of conversion as provided by this code, a certificate of conversion must be filed for the conversion to become effective if:

(1) any domestic entity that is a party to the conversion is a filing entity; or

(2) any domestic entity to be created under the plan of conversion is a filing entity.

(b) If a certificate of conversion is required to be filed in connection with a conversion, the certificate must be signed on behalf of the converting entity and must include:

(1) the plan of conversion or a statement certifying the following:

(A) the name and jurisdiction of organization of the converting entity;

(B) the organizational form of the converting entity;

(C) that a signed plan of conversion is on file at the principal place of business of the converting entity, and the address of the principal place of business;

(D) that a signed plan of conversion will be on file after the conversion at the principal place of business of the converted entity, and the address of the principal place of business; and

(E) that a copy of the plan of conversion will be on written request furnished without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting entity or the converted entity; and

(2) a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation

and the governing documents of the converting entity. (TBCA 5.18.A; TLLCA 10.09.A; TRLPA 2.15(e); TRPA 9.05(e) (part).)

Source Law

[TBCA 5.18]

A. If a plan of conversion has been approved in accordance with Article 5.17 of this Act and has not been abandoned, articles of conversion shall be executed by the converting entity by an officer or other duly authorized representative and shall set forth:

(1) the plan of conversion or a statement certifying the following:

(a) the name, state or country of incorporation, formation, and organization of the converting entity, and organizational form of the converting entity;

(b) that a plan of conversion has been approved;

(c) that an executed plan of conversion is on file at the principal place of business of the converting entity, stating the address thereof, and that an executed plan of conversion will be on file, from and after the conversion, at the principal place of business of the converted entity, stating the address thereof; and

(d) that a copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or the converted entity (after the conversion), on written request and without cost, to any shareholder of the converting entity or the converted entity;

(2) if the converting entity is a domestic corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or series;

(3) if the converting entity is a domestic corporation, the number of outstanding shares, not entitled to vote only as a class, voted for and against the plan, respectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or

series voted for and against the plan, respectively; and

(4) if the converting entity is a foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which it was incorporated, formed, or organized and by its constituent documents.

[TLLCA 10.09]

A. If a plan of conversion has been approved in accordance with Article 10.08 of this Act and has not been abandoned, articles of conversion shall be executed by the converting entity by a manager (or, if none, by a member) or other duly authorized representative thereof and shall set forth:

(1) the plan of conversion or a statement certifying the following:

(a) the name, the state of incorporation, formation, or organization of the converting entity, and the organizational form of the converting entity;

(b) that a plan of conversion has been approved;

(c) that an executed plan of conversion is on file at the principal place of business of the converting entity, stating the address thereof, and that an executed plan of conversion will be on file, from and after the conversion, at the principal place of business of the converted entity, stating the address thereof; and

(d) that a copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or the converted entity (after the conversion), on written request and without cost, to any shareholder, partner, or member of the converting entity or the converted entity;

(2) a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized and by its constituent documents; and

(3) any other statements or information that may be required by any law or rule to which the converting entity or converted entity is subject or that the converting entity or the converted entity chooses to include in the articles.

[TRLPA 2.15]

(e) If a plan of conversion has been approved in accordance with the preceding provisions of this section and has not been abandoned, articles of conversion shall be executed by the converting entity by a partner, officer, or other duly authorized representative thereof and shall set forth:

(1) the plan of conversion or a statement certifying the following:

(A) the name, the state or country of incorporation, formation, or organization of the converting entity and the organizational form of the converting entity;

(B) that a plan of conversion has been approved;

(C) that an executed plan of conversion is on file at the principal place of business of the converting entity, stating the address thereof, and that an executed plan of conversion will be on file, from and after the conversion, at the principal place of business of the converting entity, stating the address thereof; and

(D) that a copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or the converted entity (after the conversion), on written request and without cost, to any member of the converting entity or the converted entity; and

(2) a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized and by its constituent documents.

[TRPA 9.05]

(e) If a plan of conversion has been approved in accordance with the preceding

provisions of this section and has not been abandoned, unless the converted entity and the converting entities are both partnerships:

(1) articles of conversion shall be executed by the converting entity by a partner, officer, or other duly authorized representative thereof and shall set forth:

(A) the plan of conversion or a statement certifying the following:

(i) the name, the state of incorporation, formation, or organization of the converting entity and the organizational form of the converted entity;

(ii) that a plan of conversion has been approved;

(iii) that an executed plan of conversion is on file at the principal place of business of the converting entity, stating the address thereof, and that an executed plan of conversion will be on file, from and after the conversion, at the principal place of business of the converted entity, stating the address thereof; and

(iv) that a copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or the converted entity (after the conversion), on written request and without cost, to any member of the converting entity or the converted entity; and

(B) a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized and by its constituent documents;

. . .

Revisor's Note

See Revisor's Note to Section 10.151.

Revised Law

Sec. 10.155. FILING OF CERTIFICATE OF CONVERSION. (a) If a certificate of conversion is required to be filed, the certificate of conversion must be filed in accordance with Chapter 4. If the converted entity is a filing entity, the certificate of formation of the filing entity must also be filed with the certificate of conversion in accordance with Chapter 4.

Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If the converting entity is a domestic real estate investment trust, the certificate of conversion must be filed in accordance with Chapter 4 with the county clerk of the county in which the converting entity's principal place of business in this state is located.

(c) If the converted entity is a domestic real estate investment trust, the certificate of formation of the converted entity must also be filed with the certificate of conversion in accordance with Chapter 4 with the county clerk of the county in which the converted entity's principal place of business in this state is located. (TBCA 5.18.B; TLLCA 10.09.B; TRLPA 2.15(f); TRPA 9.05(e) (part).)

Source Law

[TBCA 5.18]

B. The original and one copy of the articles of conversion shall be delivered to the Secretary of State. Two copies of the articles of incorporation of the domestic corporation, if the converted entity is a domestic corporation, shall also be delivered to the Secretary of State with the articles of conversion.

[TLLCA 10.09]

B. The original and one copy of the articles of conversion shall be delivered to the Secretary of State. Two copies of the articles of organization of the domestic limited liability company, if the converted entity is a domestic limited liability company, shall also be delivered to the Secretary of State with the articles of conversion.

[TRLPA 2.15]

(f) Except as otherwise provided by Section 2.14 of this Act, on the issuance of the certificate of conversion by the secretary of state, the conversion of a converting entity shall be effective.

[TRPA 9.05]

(e) If a plan of conversion has been approved in accordance with the preceding provisions of this section and has not been

abandoned, unless the converted entity and the converting entities are both partnerships:

. . . .

(2) the original and one copy of the articles of conversion shall be delivered to the secretary of state; and

(3) two copies of the certificate of limited partnership of the domestic limited partnership, if the converted entity is a domestic limited partnership, shall also be delivered to the secretary of state with the articles of conversion.

Revisor's Note

No substantive change is intended. By way of statutory omission, the Texas Revised Limited Partnership Act implies but does not explicitly require the filing of the certificate of conversion. The revised law corrects this omission.

Revised Law

Sec. 10.156. ACCEPTANCE OF CERTIFICATE FOR FILING. The filing officer may not accept a certificate of merger, exchange, or conversion for filing if:

(1) the filing officer finds that the certificate of merger, exchange, or conversion does not conform to law; or

(2) the required franchise taxes have not been paid or the certificate of merger, exchange, or conversion does not provide that one or more of the surviving, new, or acquiring organizations or the converted entity is liable for the payment of the required franchise taxes. (TBCA 5.04.C (part), 5.18.C (part); TLLCA 10.03.B (part), 10.09.C (part); TNPCA 5.04.B (part); TRLPA 2.11(e) (part); TRPA 9.02(e) (part), 9.05(f) (part).)

Source Law

[TBCA 5.04]

C. If the Secretary of State finds that the articles of merger or exchange conform to law, he shall, when all fees and franchise taxes have been paid as required by law, or if the plan of merger or exchange (or statement provided in lieu thereof) provides that one or more of the surviving, new, or acquiring domestic or foreign corporations or other entities will be responsible for the payment of all such fees and franchise taxes

and that all of such surviving, new, or acquiring domestic or foreign corporations and other entities will be obligated to pay such fees and franchise taxes if the same are not timely paid:

. . . .

[TBCA 5.18]

C. If the Secretary of State finds that the articles of conversion conform to law, has received all filings required to be received, and has issued all certificates required to be issued in connection with the incorporation, formation, or organization of the converted entity, if any, the Secretary of State shall, when all fees and franchise taxes have been paid as required by law or if the articles of conversion provide that the converted entity will be liable for the payment of all such fees and franchise taxes:

. . . .

[TLLCA 10.03]

B. . . . Unless the Secretary of State finds that the articles of merger do not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law or if the plan of merger provides that one or more of the surviving, new, or acquiring domestic or foreign limited liability companies or other entities will be responsible for the payment of all of such fees and franchise taxes and that all of such surviving, new, or acquiring domestic or foreign limited liability companies and other entities will be obligated to pay such fees and franchise taxes if the same are not timely paid

[TLLCA 10.09]

C. If the Secretary of State finds that the articles of conversion conform to law, has received all filings required to be received, and has issued all certificates required to be issued in connection with the incorporation, formation, or organization of the converted entity, if any, the Secretary of State shall, when all fees and franchise

taxes have been paid as required by law or if the articles of conversion provide that the converted entity will be liable for the payment of all such fees and franchise taxes:

. . . .

[TNPCA 5.04]

B. . . . If the Secretary of State finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

. . . .

[TRLPA 2.11]

(e) . . . Unless the secretary of state finds that a certificate of merger does not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law, or if the plan of merger (or a statement provided in lieu thereof) provides that one or more of the surviving or new domestic or foreign limited partnerships or other entities will be responsible for the payment of all fees and franchise taxes and that all of the surviving or new domestic or foreign limited partnerships and other entities will be obligated to pay the fees and franchise taxes if they are not timely paid, the secretary of state shall

[TRPA 9.02]

(e) . . . Unless the secretary of state finds that a certificate of merger does not conform to law, then on receipt of all applicable filing fees and franchise taxes, if any, required by law, or if the plan of merger (or a statement provided in lieu thereof) provides that one or more of the surviving or new domestic or foreign partnerships or other entities that will be responsible for the payment of all the fees and franchise taxes and that all of the surviving or new domestic or foreign partnerships and other entities will be obligated to pay the fees and franchise taxes if they are not timely paid, the secretary of state shall

[TRPA 9.05]

(f) If the secretary of state finds that the articles of conversion conform to law, has received all filings required to be received, and has issued all certificates required to be issued in connection with the incorporation, formation, or organization of the converted entity, if any, the secretary of state shall, when all fees and franchise taxes have been paid as required by law or if the articles of conversion provide that the converted entity will be liable for the payment of all such fees and franchise taxes:

. . .

Revisor's Note

No substantive change is intended.

[Sections 10.157-10.200 reserved for expansion]

SUBCHAPTER E. ABANDONMENT OF MERGER, EXCHANGE, OR CONVERSION

Revised Law

Sec. 10.201. ABANDONMENT OF PLAN OF MERGER, EXCHANGE, OR CONVERSION. After a merger, interest exchange, or conversion is approved as provided by this code, and at any time before the merger, interest exchange, or conversion takes effect, the plan of merger, interest exchange, or conversion may be abandoned, subject to any contractual rights, by any of the domestic entities that are a party to the merger, interest exchange, or conversion, without action by the owners or members, under the procedures provided by the plan of merger, exchange, or conversion or, if no abandonment procedures are provided, in the manner determined by the governing authority. (TBCA 5.03.L (part), 5.17.E (part); TNPCA 5.03.B; TREITA 23.30(I) (part).)

Source Law

[TBCA 5.03]

L. After a merger or share exchange is approved, and at any time before the merger or share exchange has become effective, the plan of merger or share exchange may be abandoned (subject to any contractual rights) by any of the corporations that are a party to the merger, without shareholder action, in accordance with the procedures set forth in the plan of merger or exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors.

. . .

[TBCA 5.17]

E. After a conversion of a corporation is approved, and at any time before the conversion has become effective, the plan of conversion may be abandoned (subject to any contractual rights) by the converting entity, without shareholder action, in accordance with the procedures set forth in the plan of conversion or, if any such procedures are not set forth in the plan, in the manner determined by the board of directors. . . .

[TNPCA 5.03]

B. After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[TREITA 23.30]

(I) After a merger or share exchange is approved, and at any time before the merger or share exchange has become effective, the plan of merger or share exchange may be abandoned (subject to any contractual rights) by any of the real estate investment trusts that are a party to the merger, without shareholder action, in accordance with the procedures set forth in the plan of merger or exchange, or, if no such procedures are set forth in the plan, in the manner determined by the trust managers. . . .

Revisor's Note

The revised law is derived from the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Real Estate Investment Trust Act. The Texas Non-Profit Corporation Act permitted abandonment of a merger prior to filing of the articles of merger. The revised law extends the abandonment authority until effectiveness of the merger, in the event the merger's effectiveness is delayed after filing.

Revised Law

Sec. 10.202. ABANDONMENT AFTER FILING. (a) If a

certificate of merger, exchange, or conversion has been filed, the merger, interest exchange, or conversion may be abandoned before its effectiveness in accordance with Sections 4.057 and 10.201.

(b) A filing of a certificate of abandonment under Section 4.057 is not required for the abandonment of a merger, interest exchange, or conversion if no filing is required under Subchapter D to make the merger, interest exchange, or conversion effective. (TBCA 5.03.L (part), 5.17.E (part); TLLCA 9.03.F (part); TREITA 23.30(I) (part); TRLPA 2.12.F (part).)

Source Law

[TBCA 5.03]

L. . . . If articles of merger or exchange have been filed with the Secretary of State but the merger or share exchange has not yet become effective, the merger or share exchange may be abandoned if a statement, executed on behalf of each domestic corporation and foreign corporation or other entity that is a party to the merger or share exchange by an officer or other duly authorized representative, stating that the plan of merger or exchange has been abandoned in accordance with applicable law is filed with the Secretary of State prior to the effectiveness of the merger or share exchange. . . .

[TBCA 5.17]

E. . . . If articles of conversion have been filed with the Secretary of State but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the Secretary of State prior to the effectiveness of the conversion. . . .

[TLLCA 9.03]

F. If articles of organization, articles of amendment or restatement, articles of merger, articles of conversion, an application, or any other document permitted to be filed pursuant to this Act

with the Secretary of State have been filed but the event or transaction evidenced by the filing has not become effective, the filing may be abandoned in accordance with the agreement of the parties to the filing by filing a certificate of abandonment with the Secretary of State before the effectiveness of the event or transaction in accordance with the terms of the document so filed. . . .

[TREITA 23.30]

(I) . . . If articles of merger or exchange have been filed with the county clerk of the county of the principal place of business of the real estate investment trust but the merger or share exchange has not become effective, the merger or share exchange may be abandoned as provided in this Subsection if a statement, executed on behalf of each domestic and foreign entity that is a party to the merger or share exchange by an officer or other duly authorized representative of the domestic or foreign entity, and stating that the plan of merger or exchange has been abandoned in accordance with the plan and this Subsection, is filed with the county clerk in each county where the principal place of business of a Texas real estate investment trust that is a party to the merger or exchange is located before the merger or share exchange takes effect.

[TRLPA 2.12]

F. If a certificate of limited partnership, a certificate of amendment or cancellation, a judicial decree of amendment or cancellation, a certificate of merger, a certificate of conversion, a restated certificate or any other document permitted to be filed pursuant to this Act with the Secretary of State has been filed but the event or transaction evidenced thereby has not become effective, such filing may be abandoned in accordance with the agreement of the parties thereto and, if so abandoned, a certificate of abandonment, signed on behalf of each domestic and foreign limited

partnership or other entity that is a party to the event or transaction by any general partner, an officer or other duly authorized representative, stating the nature, date of filing and parties to the filing to be abandoned and that the event or transaction has been abandoned in accordance with the agreement of the parties, is filed with the Secretary of State prior to the effectiveness of the event or transaction in accordance with the terms of the document so filed. . . .

Revisor's Note

No substantive change is intended. Subsection (b) makes explicit what is implied in the source laws and the Texas Revised Partnership Act, namely that no filing is needed to abandon a transaction that requires no filing to effect.

[Sections 10.203-10.250 reserved for expansion]

SUBCHAPTER F. PROPERTY TRANSFERS AND DISPOSITIONS

Revised Law

Sec. 10.251. GENERAL POWER OF DOMESTIC ENTITY TO SELL, LEASE, OR CONVEY PROPERTY. (a) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may transfer and convey by sale, lease, assignment, or another method an interest in property of the entity, including real property. The transfer and conveyance may:

(1) be made with or without the goodwill of the entity;

(2) be made on any terms and conditions and for any consideration, which may consist wholly or partly of money or other property, including an ownership interest in a domestic entity or non-code organization; and

(3) be evidenced by a deed, assignment, or other instrument of transfer or conveyance, with or without the seal of the entity.

(b) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may grant a pledge, mortgage, deed of trust, or trust indenture with respect to an interest in property of the entity, including real property, with or without the seal of the entity. (TBCA 5.08 (part), 5.09.A; TNPCA 5.08 (part); TREITA 24.10(A), (C) (part).)

Source Law

[TBCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors. . . .

[TBCA 5.09]

A. Except as otherwise provided in the articles of incorporation and except as provided in the next sentence of this section, the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors, without authorization or consent of the shareholders. Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust or trust indenture and no authorization or consent of the shareholders shall be required for the validity thereof or for any sale pursuant to the terms thereof.

[TNPCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. . . .

[TREITA 24.10]

(A) Except as otherwise provided in the declaration of trust and except as provided in the next sentence of this Subsection, the sale, lease, exchange, or other disposition of all, or substantially all, of the property

and assets of a real estate investment trust, when made in the usual and regular course of the business of the real estate investment trust, may be made on the terms and conditions and for the consideration, which may consist in whole or in part of money or real or personal property, including shares of any real estate investment trust or domestic or foreign corporation, as authorized by its trust managers without authorization or consent of the shareholders. Except as otherwise provided in the declaration of trust, the trust managers may authorize any pledge, mortgage, deed of trust, or trust indenture, and no authorization or consent of the shareholders shall be required for the validity of or for any sale pursuant to the terms of the pledge, mortgage, deed of trust, or trust indenture.

(C) When authorized by appropriate resolution of the trust managers, any real estate investment trust may convey land by deed, with or without the seal, if any, of the real estate investment trust, signed by an officer or attorney in fact of the real estate investment trust. . . .

Revisor's Note

No substantive change is intended. Sections 10.251-10.254 contain provisions regarding the power of domestic entities to transfer, sell, and lease their property. These provisions are based generally on similar provisions contained in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Real Estate Investment Trust Act. The revised law clarifies and sets forth a general rule that, except as may be provided elsewhere in the code or in the governing documents of an entity, transfers of property do not require owner or member approval. Current requirements for approval by owners or members of sales of all or substantially all the assets of an entity have been retained, where applicable, in the titles governing the separate types of entities. Transfers of property may require approval of governing

persons if specified in the title governing the type of entity. For general partnerships, the owners and governing persons are usually the same.

Revised Law

Sec. 10.252. NO APPROVAL REQUIRED FOR CERTAIN DISPOSITIONS OF PROPERTY. Except as otherwise provided by this code, the governing documents of the domestic entity, or specific limitations established by the governing authority, a sale, lease, assignment, conveyance, pledge, mortgage, deed of trust, trust indenture, or other transfer of an interest in real property or other property made by a domestic entity does not require the approval of the members or owners of the entity. (TBCA 5.08 (part), 5.09.A (part); TNPCA 5.08 (part), 5.09 (part); TREITA 24.10(A).)

Source Law

[TBCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors. . . .

[TBCA 5.09]

A. . . . Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust or trust indenture and no authorization or consent of the shareholders shall be required for the validity thereof or for any sale pursuant to the terms thereof.

[TNPCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. . . .

[TNPCA]

5.09.A. A sale, lease or exchange of all, or substantially all, the property and assets of a corporation, may be made upon such terms and conditions and for such

consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

. . . .

(4) Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust, or trust indenture and no authorization or consent of members shall be required for the validity thereof or for any sale pursuant to the terms thereof; provided that where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, the members may authorize any pledge, mortgage, deed of trust, or trust indenture in the same manner as provided in Subsection (3) of this Section, and no authorization by the board of directors shall be required for the validity thereof or for any sale pursuant to the terms thereof.

. . . .

[TREITA 24.10]

(A) Except as otherwise provided in the declaration of trust and except as provided in the next sentence of this Subsection, the sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a real estate investment trust, when made in the usual and regular course of the business of the real estate investment trust, may be made on the terms and conditions and for the consideration, which may consist in whole or in part of money or real or personal property, including shares of any real estate investment trust or domestic or foreign corporation, as authorized by its trust managers without authorization or consent of the shareholders. Except as otherwise provided in the declaration of trust, the trust managers may authorize any pledge, mortgage, deed of trust, or trust indenture, and no authorization or consent of the shareholders shall be required for the validity of or for

any sale pursuant to the terms of the pledge, mortgage, deed of trust, or trust indenture.

Revisor's Note

See Revisor's Note to Section 10.251.

Revised Law

Sec. 10.253. RECORDING INSTRUMENT CONVEYING REAL PROPERTY OF DOMESTIC ENTITY. (a) A deed or other instrument executed by a domestic entity that conveys an interest in real property may be recorded in the same manner and with the same effect as other similar instruments if the instrument is signed and acknowledged by:

(1) an officer, authorized attorney-in-fact, or other authorized person of the entity; or

(2) in the case of a partnership or limited liability company, a governing person of the entity.

(b) A deed or other instrument executed by a domestic entity that conveys an interest in real property and that is recorded and signed by an officer, authorized attorney-in-fact, or other authorized person of the entity constitutes prima facie evidence that the sale or conveyance that is the subject of the instrument was authorized under this code and the governing documents of the entity. (TBCA 5.08; TLLCA 2.11; TNPCA 5.08; TREITA 24.10(C).)

Source Law

[TBCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by an officer of the corporation, shall constitute prima facie evidence that such resolution of the board of directors was duly adopted.

[TLLCA]

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 provided 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.

[TNPCA]

5.08.A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by an officer of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or member was duly adopted.

[TREITA 24.10]

(C) When authorized by appropriate resolution of the trust managers, any real estate investment trust may convey land by deed, with or without the seal, if any, of the real estate investment trust, signed by an officer or attorney in fact of the real estate investment trust. The deed, when acknowledged by the officer or attorney in fact to be the act of the real estate investment trust or proved in the manner prescribed for other conveyances of lands, may be recorded in the same manner and with the same effect as other deeds. The deed when recorded, if signed by an officer of the real estate investment trust, constitutes prima facie evidence that the resolution of the trust managers was duly adopted.

Revisor's Note

See Revisor's Note to Section 10.251.

Revised Law

Sec. 10.254. DISPOSITION OF PROPERTY NOT A MERGER OR CONVERSION; LIABILITY. (a) A disposition of all or part of the property of a domestic entity, regardless of whether the disposition requires the approval of the entity's owners or members, is not a merger or conversion for any purpose.

(b) Except as otherwise expressly provided by another law, a person acquiring property described by this section may not be held responsible or liable for a liability or obligation of the transferring domestic entity that is not expressly assumed by the person. (TBCA 5.10.B; TREITA 24.20(B).)

Source Law

[TBCA 5.10]

B. A disposition of any, all, or substantially all, of the property and assets of a corporation, whether or not it requires the special authorization of the shareholders of the corporation, effected under Section A of this article or under Article 5.09 of this Act or otherwise:

(1) is not considered to be a merger or conversion pursuant to this Act or otherwise; and

(2) except as otherwise expressly provided by another statute, does not make the acquiring corporation, foreign corporation, or other entity responsible or liable for any liability or obligation of the selling corporation that the acquiring corporation, foreign corporation, or other entity did not expressly assume.

[TREITA 24.20]

(B) A disposition of any, all, or substantially all of the property and assets of a real estate investment trust, whether or not it requires the special authorization of the shareholders of the real estate investment trust, effected under Subsection (A) of this Section or under Section 23.60 of this Act or otherwise:

(1) is not considered to be a merger pursuant to this Act or otherwise; and

(2) except as otherwise expressly provided by another statute, does not make the acquiring real estate investment trust, corporation, partnership, or other entity

responsible or liable for any liability or obligation of the selling real estate investment trust that the acquiring entity did not expressly assume.

Revisor's Note

Based on provisions in the Texas Business Corporation Act and Texas Real Estate Investment Trust Act, Section 10.254 codifies for all domestic entities to which Chapter 10 applies that a disposition of assets will not constitute a merger or conversion such that the acquiring entity would be liable for the obligations of the transferring entity under the "de facto merger" doctrine or otherwise unless the acquiring person expressly assumes an obligation.

[Sections 10.255-10.300 reserved for expansion]

SUBCHAPTER G. BANKRUPTCY REORGANIZATION

Revised Law

Sec. 10.301. REORGANIZATION UNDER BANKRUPTCY AND SIMILAR LAWS. (a) A trustee appointed for a domestic entity that is being reorganized under a federal statute, the designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute to act on behalf of the domestic entity may, without action by or notice to the domestic entity's governing authority, owners, or members, in order to carry out a plan of reorganization ordered by a court under the federal statute:

(1) amend or restate the domestic entity's certificate of formation if the certificate of formation after amendment or restatement contains only provisions required or permitted to be contained in the certificate of formation;

(2) merge or exchange an interest with one or more domestic entities or non-code organizations under a plan of merger or exchange having any provision required or permitted by Sections 10.002, 10.003, 10.004, 10.005, 10.052, and 10.053;

(3) change the location of the domestic entity's registered office, change its registered agent, and remove or appoint any agent to receive service of process;

(4) alter, amend, or repeal the domestic entity's governing documents other than filing instruments;

(5) constitute or reconstitute and classify or reclassify the domestic entity's governing authority and name, constitute, or appoint managerial officials in place of or in addition to all or some of the managerial officials;

(6) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the domestic entity's property and assets;

(7) authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, regardless of whether the obligation is convertible into ownership interests of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any ownership interests of any class;

(8) wind up and terminate the entity's existence; or

(9) effect a conversion.

(b) An action taken under Subsection (a)(4) or (5) takes effect on entry of the order approving the plan of reorganization or on another effective date as may be specified, without further action of the domestic entity, as and to the extent provided by the plan of reorganization or the order approving the plan of reorganization. (TBCA 4.14.A; TLLCA 8.12.A; TREITA 26.10(A), (B); TRLPA 2.06(a).)

Source Law

[TBCA 4.14]

A. Authorization. Notwithstanding any other provision of this Act to the contrary, a trustee appointed for a corporation being reorganized under a federal statute, the designated officers of the corporation, or any other individual or individuals designated by the court to act on behalf of the corporation may do any of the following without action by or notice to its board of directors or shareholders in order to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute:

(1) amend or restate its articles of incorporation if the articles after amendment or restatement contain only provisions required or permitted in articles;

(2) merge or engage in a share exchange with one or more domestic or foreign corporations or other entities pursuant to a plan of merger or exchange having such terms and provisions as required or permitted by Articles 5.01 and 5.02 of this Act;

(3) change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process;

(4) alter, amend, or repeal its bylaws;

(5) constitute or reconstitute and classify or reclassify its board of directors, and name, constitute, or appoint directors and officers in place of or in addition to all or some of the officers or directors then in place;

(6) sell, lease, exchange or otherwise dispose of all, or substantially all, of its property and assets;

(7) authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any shares of any class;

(8) dissolve; or

(9) effect a conversion.

Actions taken under Subsection (4) or (5) of this section are effective on entry of the order or decree approving the plan of reorganization or on another effective date as may be specified, without further action of the corporation, as and to the extent set forth in the plan of reorganization or the order or decree approving the plan of reorganization.

[TLLCA 8.12]

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

[TREITA 26.10]

(A) Notwithstanding any other provision of this Act to the contrary, a trustee appointed for a real estate investment trust being reorganized under a federal statute, the designated officers of the real estate investment trust, or any other individual or individuals designated by the court to act on behalf of the real estate investment trust may do any of the following without action by or notice to its trust managers or

shareholders in order to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute:

(1) amend or restate its declaration of trust if the declaration of trust after amendment or restatement contains only provisions required or permitted in a declaration of trust;

(2) merge or engage in a share exchange with one or more domestic or foreign real estate investment trusts, corporations, partnerships, or other entities pursuant to a plan of merger or exchange having such terms and provisions as required or permitted by Sections 23.10 and 23.20 of this Act;

(3) change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process;

(4) alter, amend, or repeal its bylaws;

(5) constitute or reconstitute and classify or reclassify its trust managers, and name, constitute, or appoint trust managers and officers in place of or in addition to all or some of the officers or trust managers then in place;

(6) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets;

(7) authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any shares of any class; or

(8) dissolve.

(B) Actions taken under Subdivision (4) or (5) of Subsection (A) of this Section take effect on the date the order or decree approving the plan of reorganization is entered or on another effective date as may be specified, without further action of the real estate investment trust, as and to the extent set forth in the plan of reorganization or the order or decree

approving the plan of reorganization.

[TRLPA 2.06]

(a) Notwithstanding any other provisions of this Act to the contrary, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute, a domestic limited partnership being reorganized under a federal statute may without action by or notice to its partners:

(1) amend or restate its certificate if the certificate after amendment or restatement contains only provisions of the type required or permitted in the certificate;

(2) merge or engage in a conversion or an interest exchange with one or more other domestic or foreign limited partnerships or other entities pursuant to this Act;

(3) sell, lease, exchange or otherwise dispose of all or substantially all, of its property and assets; or

(4) cancel its certificate on completion of winding up of the limited partnership.

Revisor's Note

Based on provisions in the Texas Business Corporation Act, Texas Limited Liability Company Act, Texas Real Estate Investment Trust Act, and Texas Revised Limited Partnership Act, Sections 10.301-10.306 codify for all domestic entities to which Chapter 10 applies rules regarding the effect of a federal bankruptcy reorganization proceeding on certain actions that would otherwise require owner or member approval. These provisions expand this law to nonprofit corporations, cooperatives, and general partnerships, which are not governed by the Texas Business Corporation Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, and Texas Real Estate Investment Trust Act. However, because federal bankruptcy law supersedes state law, federal bankruptcy law would apply

and govern these other entities anyway.

Revised Law

Sec. 10.302. SIGNING OF DOCUMENTS. A trustee appointed for a domestic entity being reorganized under a federal statute, the designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute may sign on behalf of a domestic entity that is being reorganized:

(1) a certificate of amendment or restated certificate of formation containing:

(A) the name of the domestic entity;

(B) each amendment or the restatement approved by the court;

(C) the date of the court's order approving the certificate of amendment or the restatement;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(2) a certificate of merger or exchange containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of merger or exchange approved by the court, which must include the information required by Section 10.151(b) or 10.152, as applicable, but which is not required to include the resolution of the governing authority referred to in Section 10.152;

(C) the date of the court's order approving the plan of merger or consolidation;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(3) a certificate of termination containing:

(A) the name of the domestic entity;

(B) the information required by Sections 11.101(c)(1)-(4);

(C) the date of the court's order approving the certificate of termination;

(D) a statement that the obligations of the domestic entity, including debts and liabilities, have been paid or discharged as provided by the plan of reorganization and the remaining property and assets of the domestic entity have been distributed as provided by the plan of reorganization;

(E) the name of the court having jurisdiction,

file name, and case number of the reorganization case in which the order or decree was entered; and

(F) a statement that the court had jurisdiction of the case under a federal statute;

(4) a statement of change of registered office or registered agent, or both, containing:

(A) the name of the domestic entity;

(B) the information required by Section 5.202(b), as applicable, but not the information included in the statement referred to in Section 5.202(b)(6);

(C) the date of the court's order approving the statement of change of registered office or registered agent, or both;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute; or

(5) a certificate of conversion containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of conversion approved by the court, which must include the information required by Section 10.103;

(C) the date of the court's order or decree approving the plan of conversion;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute. (TBCA 4.14.B; TREITA 26.10(C), (D); TRLPA 2.06(b).)

Source Law

[TBCA 4.14]

B. Authority to Sign Documents. A trustee appointed for a corporation being reorganized under a federal statute, the designated officers of the corporation, or any other individual or individuals designated by the court may sign on behalf of a corporation that is being reorganized:

(1) articles of amendment or restated articles of incorporation setting forth:

(a) the name of the corporation;

(b) the text of each amendment or the restatement approved by the

court;

(c) the date of the court's order or decree approving the articles of amendment or restatement;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute; or

(2) articles of merger or exchange setting forth:

(a) the name of the corporation;

(b) the text of the part of the plan of reorganization that contains the plan of merger or exchange approved by the court, which shall include the information required by Article 5.04A or 5.16B of this Act, as applicable, but need not include the resolution of the board of directors referred to in Article 5.16B(3) of this Act;

(c) the date of the court's order or decree approving the plan of merger or consolidation;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute; or

(3) articles of dissolution setting forth:

(a) the name of the corporation;

(b) the information required by Articles 6.06A(1)(2) and (3) of this Act;

(c) the date of the court's order or decree approving the articles of dissolution;

(d) that the debts, obligations and liabilities of the corporation have been paid or discharged as provided in the plan of reorganization and that the remaining property and assets of the corporation have been distributed as provided in the plan of reorganization;

(e) the court, file name, and

case number of the reorganization case in which the order or decree was entered; and

(f) a statement that the court had jurisdiction of the case under federal statute; or

(4) a statement of change of registered office or registered agent, or both, setting forth:

(a) the name of the corporation;

(b) the information required by Article 2.10A of this Act, as applicable, but not the information included in the statement referred to in Article 2.10A(7) of this Act;

(c) the date of the court's order or decree approving the statement of change of registered office or registered agent, or both;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute; or

(5) articles of conversion setting forth:

(a) the name of the corporation;

(b) the text of the part of the plan of reorganization that contains the plan of conversion approved by the court, which shall include the information required by Article 5.18 of this Act;

(c) the date of the court's order or decree approving the plan of conversion;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute.

[TREITA 26.10]

(C) A trustee appointed for a real estate investment trust being reorganized under a federal statute, the designated

officers of the real estate investment trust, or any other individual or individuals designated by the court on behalf of a real estate investment trust that is being reorganized, may sign:

(1) articles of amendment or a restated declaration of trust setting forth:

(a) the name of the real estate investment trust;

(b) the text of each amendment or the restatement approved by the court;

(c) the date of the court's order or decree approving the articles of amendment or restatement;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute;

(2) articles of merger or exchange setting forth:

(a) the name of the real estate investment trust;

(b) the text of the part of the plan of reorganization that contains the plan of merger or exchange approved by the court and that shall include the information required by Section 23.40 of this Act, as applicable;

(c) the date of the court's order or decree approving the plan of merger or consolidation;

(d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the case under federal statute; or

(3) articles of dissolution setting forth:

(a) the name of the real estate investment trust;

(b) the information required by Section 19.10 of this Act, if any;

(c) the date of the court's order or decree approving the articles of

dissolution;

(d) a statement that the debts, obligations, and liabilities of the real estate investment trust have been paid or discharged as provided in the plan of reorganization and that the remaining property and assets of the real estate investment trust have been distributed as provided in the plan of reorganization;

(e) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(f) a statement that the court had jurisdiction of the case under federal statute.

(D) The following apply when a domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized merges or engages in a share exchange with a real estate investment trust that is being reorganized pursuant to a plan of reorganization:

(1) Sections 23.10, 23.20, 23.30, 25.10, 25.20, and 25.30 of this Act apply to the domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized to the same extent those sections would apply if that entity were merging or engaging in a share exchange with a real estate investment trust that is not being reorganized.

(2) Section 23.60 of this Act applies to the domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized to the same extent that Section would apply if the domestic or foreign real estate investment trust, corporation, partnership, or other entity were merging or engaging in a share exchange with a real estate investment trust that is not being reorganized, except as otherwise provided in the plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute.

(3) On receiving all of the required authorization for all action

required by this Act for each real estate investment trust that is a party to the plan of merger or exchange that is not being reorganized and all action by each domestic or foreign real estate investment trust, corporation, partnership, or other entity that is a party to the plan of merger or exchange required by the laws under which it is incorporated or organized and its constituent documents, each domestic or foreign real estate investment trust, corporation, partnership, or other entity that is a party to the merger or exchange other than the real estate investment trust that is being reorganized as provided in Section 23.40 of this Act, the persons described by Subsection (C) of this Section, on behalf of the real estate investment trust that is being reorganized, shall sign the articles of merger or exchange.

(4) The articles of merger or exchange shall set forth the information required in Subdivision (2) of Subsection (C) of this Section.

(5) The articles of merger or exchange shall be filed with the county clerk in each county where the principal place of business of a Texas real estate investment trust that is a party to the merger or exchange is located in the manner and with the number of copies provided in Section 23.40 of this Act.

(6) On the filing of the articles of merger or share exchange as provided in Section 23.40 of this Act, the merger or share exchange becomes effective with the same effect as if the merger or share exchange had been adopted by unanimous action of the trust managers and shareholders of the real estate investment trust being reorganized. The effectiveness of the merger or share exchange shall be determined as provided in Section 23.50 of this Act.

[TRLPA 2.06]

(b) The individual or individuals designated by the court, on behalf of a limited partnership that is being

reorganized, may execute:

(1) an amendment or restatement of the certificate containing:

(A) the name of the limited partnership;

(B) the text of each amendment or restatement approved by the court;

(C) the date of the court's order or decree approving the amendment or restatement;

(D) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(2) a certificate of merger containing:

(A) the name of the limited partnership;

(B) the information required by Subsection (b) of Section 2.11 of this Act;

(C) the date of the court's order or decree approving the merger;

(D) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(3) a certificate of cancellation containing:

(A) the name of the limited partnership;

(B) the information required by Section 2.03 of this Act and any other information permitted by Section 2.03 that the court's order requires or permits to be included;

(C) the date of the court's order or decree approving the certificate of cancellation;

(D) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the

court had jurisdiction of the case under a federal statute; or

(4) a certificate of conversion containing:

(A) the name of the limited partnership;

(B) the information required by Subsection (c) of Section 2.15 of this Act;

(C) the date of the court's order or decree approving the conversion;

(D) the court, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.301, no substantive change is intended.

Revised Law

Sec. 10.303. REORGANIZATION WITH OTHER ENTITIES. If a domestic entity or non-code organization that is not being reorganized under a federal statute merges or exchanges an interest with a domestic entity that is being reorganized under a plan of reorganization under a federal statute:

(1) Subchapters A, B, D, E, and H apply to the domestic entity or non-code organization that is not being reorganized to the same extent those subchapters would apply if the domestic entity or non-code organization were merging or engaging in an interest exchange with a domestic entity that is not being reorganized, except as otherwise provided by the plan of reorganization ordered by a court under the federal statute;

(2) Subchapter H applies to a subsidiary organization that is not being reorganized to the same extent that subchapter would apply if the subsidiary organization were merging with a parent organization that is not being reorganized;

(3) on the receipt of all required authorization for all action required by this code for each domestic entity that is a party to the plan of merger or exchange that is not being reorganized and all action by each domestic entity or non-code organization that is a party to the plan of merger or exchange required by the laws of the entity's or organization's jurisdiction of formation and governing documents, a certificate of merger or exchange shall be signed by each domestic entity or non-code organization that is a party to the merger or exchange

other than the domestic entity that is being reorganized as provided by Section 10.151 and on behalf of the domestic entity that is being reorganized by the persons specified in Section 10.302;

(4) the certificate of merger or exchange must contain the information required by Section 10.302(2);

(5) the certificate of merger or exchange must be filed in the manner provided by Section 10.153; and

(6) on the acceptance for filing of the certificate of merger or exchange in accordance with Subchapter D, the merger or interest exchange, when effective, has the same effect as if it had been adopted by unanimous action of the governing authority and owners or members of the domestic entity being reorganized, and the effectiveness of the merger or interest exchange is determined as provided by Section 10.007 or 10.054. (TBCA 4.14.C; TREITA 26.10(D); TRLPA 2.06(c), (d).)

Source Law

[TBCA 4.14]

C. Procedure for Merger or Share Exchange. When a domestic or foreign corporation or other entity that is not being reorganized merges or engages in a share exchange with a corporation that is being reorganized pursuant to a plan of reorganization:

(1) Articles 5.01, 5.02, 5.03, 5.11, 5.12, and 5.13 of this Act shall apply to the domestic or foreign corporation or other entity that is not being reorganized to the same extent they would apply if it were merging or engaging in a share exchange with a corporation that is not being reorganized;

(2) Article 5.06 of this Act shall apply to the domestic or foreign corporation or other entity that is not being reorganized to the same extent it would apply if that domestic or foreign corporation or other entity were merging or engaging in a share exchange with a corporation that is not being reorganized, except as otherwise provided in the plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute;

(3) Article 5.16E of this Act shall apply to a subsidiary corporation that is not being reorganized to the same extent it would apply if that corporation were

merging with a parent corporation that is not being reorganized;

(4) Upon the receipt of all required authorization for all action required by this Act for each corporation that is a party to the plan of merger or exchange that is not being reorganized and all action by each corporation, foreign corporation, or other entity that is a party to the plan of merger or exchange required by the laws under which it is incorporated or organized and its constituent documents, articles of merger or exchange shall be signed by each domestic or foreign corporation or other entity that is a party to the merger or exchange other than the corporation that is being reorganized as provided in Article 5.04 of this Act and on behalf of the corporation that is being reorganized by the persons specified in Section B of this Article;

(5) The articles of merger or exchange shall set forth the information required in Section B(2) of this Article;

(6) The articles of merger or exchange shall be filed with the Secretary of State in the manner and with such number of copies as is provided in Article 5.04B of this Act; and

(7) Upon the issuance of the certificate of merger or share exchange by the Secretary of State as provided in Article 5.04 of this Act, the merger or share exchange shall become effective with the same effect as if it had been adopted by unanimous action of the directors and shareholders of the corporation being reorganized. The effectiveness of the merger or share exchange shall be determined as provided in Article 5.05 of this Act.

[TREITA 26.10]

(D) The following apply when a domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized merges or engages in a share exchange with a real estate investment trust that is being

reorganized pursuant to a plan of reorganization:

(1) Sections 23.10, 23.20, 23.30, 25.10, 25.20, and 25.30 of this Act apply to the domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized to the same extent those sections would apply if that entity were merging or engaging in a share exchange with a real estate investment trust that is not being reorganized.

(2) Section 23.60 of this Act applies to the domestic or foreign real estate investment trust, corporation, partnership, or other entity that is not being reorganized to the same extent that Section would apply if the domestic or foreign real estate investment trust, corporation, partnership, or other entity were merging or engaging in a share exchange with a real estate investment trust that is not being reorganized, except as otherwise provided in the plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute.

(3) On receiving all of the required authorization for all action required by this Act for each real estate investment trust that is a party to the plan of merger or exchange that is not being reorganized and all action by each domestic or foreign real estate investment trust, corporation, partnership, or other entity that is a party to the plan of merger or exchange required by the laws under which it is incorporated or organized and its constituent documents, each domestic or foreign real estate investment trust, corporation, partnership, or other entity that is a party to the merger or exchange other than the real estate investment trust that is being reorganized as provided in Section 23.40 of this Act, the persons described by Subsection (C) of this Section, on behalf of the real estate investment trust that is being reorganized, shall sign the articles of merger or exchange.

(4) The articles of merger or

exchange shall set forth the information required in Subdivision (2) of Subsection (C) of this Section.

(5) The articles of merger or exchange shall be filed with the county clerk in each county where the principal place of business of a Texas real estate investment trust that is a party to the merger or exchange is located in the manner and with the number of copies provided in Section 23.40 of this Act.

(6) On the filing of the articles of merger or share exchange as provided in Section 23.40 of this Act, the merger or share exchange becomes effective with the same effect as if the merger or share exchange had been adopted by unanimous action of the trust managers and shareholders of the real estate investment trust being reorganized. The effectiveness of the merger or share exchange shall be determined as provided in Section 23.50 of this Act.

[TRLPA 2.06]

(c) If a domestic or foreign limited partnership that is not being reorganized merges or engages in a conversion or an interest exchange pursuant to a plan of reorganization with a domestic or foreign limited partnership or other entity that is being reorganized, Section 2.11 or 2.15 of this Act applies to the domestic or foreign limited partnership or other entity that is not being reorganized to the same extent that that section would apply if the domestic or foreign limited partnership were merging with a limited partnership that is not being reorganized except as otherwise provided in the plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute. Subject to satisfaction of the requirements of Section 2.11 or 2.15 of this Act and any other requirements of the plan of merger, a certificate of merger or conversion shall be signed on behalf of the entities that are parties to the merger or conversion and shall be filed with the secretary of state as required by Section

2.11 or 2.15 of this Act.

(d) On endorsement of the certificate by the secretary of state under Section 2.07 of this Act, the certificate of amendment, merger, conversion, or cancellation or restated certificate becomes effective and has the same effect as if it had been adopted by unanimous action of the general and the limited partners of the limited partnership being reorganized except as otherwise provided by this section or by the plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.301, no substantive change is intended.

Revised Law

Sec. 10.304. RIGHT OF DISSENT AND APPRAISAL EXCLUDED. An owner or member of a domestic entity subject to dissenters' rights being reorganized under a federal statute does not have a right to dissent and appraisal under this code except as provided by the plan of reorganization. (TBCA 4.14.D; TREITA 26.10(E).)

Source Law

[TBCA 4.14]

D. Dissenters' Rights. Shareholders of a corporation being reorganized under a federal statute do not have a right to dissent under Article 5.11, 5.16E, or 5.20 of this Act, except as the plan of reorganization may provide.

[TREITA 26.10]

(E) Shareholders of a real estate investment trust being reorganized under a federal statute do not have a right to dissent under this Act, unless the plan of reorganization provides otherwise.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.301, no substantive change is intended.

Revised Law

Sec. 10.305. AFTER FINAL DECREE. This subchapter does not

apply after the entry of a final decree in a reorganization case under a federal statute even though the court that renders the decree may retain jurisdiction of the case for limited purposes unrelated to consummation of the plan of reorganization. (TBCA 4.14.E; TREITA 26.10(F); TRLPA 2.06(e).)

Source Law

[TBCA 4.14]

E. When Applicable. This Article shall not apply after the entry of a final decree in the reorganization case even though the court may retain jurisdiction of the case for limited purposes unrelated to consummation of the plan of reorganization.

[TREITA 26.10]

(F) This Section does not apply after a final decree is entered by a court in the reorganization case even though the court may retain jurisdiction of the case for limited purposes unrelated to consummation of the plan of reorganization.

[TRLPA 2.06]

(e) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.301, no substantive change is intended.

Revised Law

Sec. 10.306. CHAPTER CUMULATIVE OF OTHER CHANGES. This chapter does not preclude other changes in a domestic entity or its ownership or membership interests or securities by a plan of reorganization ordered by a court under a federal statute. (TBCA 4.14.F; TREITA 26.10(G); TRLPA 2.06(f).)

Source Law

[TBCA 4.14]

F. Nonexclusivity. This Article shall not preclude other changes in a corporation or its securities by a plan of reorganization ordered or decreed by a court of competent

jurisdiction under federal statute.

[TREITA 26.10]

(G) This Section does not preclude other changes in real estate investment securities by a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

[TRLPA 2.06]

(f) This section does not preclude other changes in a limited partnership or its securities by a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.301, no substantive change is intended.

[Sections 10.307-10.350 reserved for expansion]

SUBCHAPTER H. RIGHTS OF DISSENTING OWNERS

Revised Law

Sec. 10.351. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to a fundamental business transaction of a domestic entity if, immediately before the effective date of the fundamental business transaction, all of the ownership interests of the entity otherwise entitled to rights to dissent and appraisal under this code are held by one owner or only by the owners who approved the fundamental business transaction.

(b) This subchapter applies only to a "domestic entity subject to dissenters' rights," as defined in Section 1.002. That term includes a domestic for-profit corporation, professional corporation, professional association, and real estate investment trust. Except as provided in Subsection (c), that term does not include a partnership or limited liability company.

(c) The governing documents of a partnership or a limited liability company may provide that its owners are entitled to the rights of dissent and appraisal provided by this subchapter.

(New.)

Revisor's Note

Sections 10.351-10.368 primarily codify existing provisions under the Texas Business Corporation Act relating to the procedures to be followed where an owner has a right of dissent and appraisal with respect to a particular act, which the code defines as "fundamental business transactions." The

revised law has combined and simplified a number of different statutes that were contained in the Texas Business Corporation Act that governed the right of dissent with the objective of providing a clearer procedure to be followed when an owner has a right to dissent to a fundamental business transaction. The revised law does not expand these provisions to any new types of entities but permits other entities to adopt these provisions in their governing documents.

Section 10.351(c) permits limited liability companies and partnerships to provide for dissenters' rights in their governing documents. Although the Texas Revised Partnership Act, Texas Limited Liability Company Act, and Texas Revised Limited Partnership Act do not have a similar provision, implicit in those statutes is the ability of the owners of those entities to provide for similar rights by contract.

Revised Law

Sec. 10.352. DEFINITIONS. In this subchapter:

- (1) "Dissenting owner" means an owner of an ownership interest in a domestic entity subject to dissenters' rights who:
 - (A) provides notice under Section 10.356; and
 - (B) complies with the requirements for perfecting that owner's right to dissent under this subchapter.
- (2) "Responsible organization" means:
 - (A) the organization responsible for:
 - (i) the provision of notices under this subchapter; and
 - (ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;
 - (B) with respect to a merger or conversion:
 - (i) for matters occurring before the merger or conversion, the organization that is merging or converting; and
 - (ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's ownership interest in the merger or conversion;
 - (C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange; and
 - (D) with respect to the sale of all or substantially all of the assets of an organization, the

organization the assets of which are to be transferred by sale or in another manner. (New.)

Revisor's Note

The revised law adds definitions of a "dissenting owner" and a "responsible organization." These definitions allow simplified language in the subsequent sections of this subchapter.

Revised Law

Sec. 10.353. FORM AND VALIDITY OF NOTICE. (a) Notice required under this subchapter:

- (1) must be in writing; and
- (2) may be mailed, hand-delivered, or delivered by courier or electronic transmission.

(b) Failure to provide notice as required by this subchapter does not invalidate any action taken. (New.)

Revisor's Note

The revised law clarifies how notices must be given. Many of the source law provisions for Subchapter H of the revised law were not clear in this respect.

Revised Law

Sec. 10.354. RIGHTS OF DISSENT AND APPRAISAL. (a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

- (1) dissent from:
 - (A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;
 - (B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;
 - (C) a plan of exchange in which the ownership interest of the owner is to be acquired;
 - (D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion; or
 - (E) a merger effected under Section 10.006 in which:

(i) the owner is entitled to vote on the merger; or

(ii) the ownership interest of the owner is converted or exchanged; and

(2) subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership

interest through an appraisal.

(b) Notwithstanding Subsection (a), subject to Subsection (c), an owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if:

(1) the ownership interest held by the owner is part of a class or series of ownership interests that are, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate:

(A) listed on a national securities exchange or a similar system;

(B) listed on the Nasdaq Stock Market or a successor quotation system;

(C) designated as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or a successor system; or

(D) held of record by at least 2,000 owners;

(2) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration that is different from the consideration to be provided to any other holder of an ownership interest of the same class or series as the ownership interest held by the owner, other than cash instead of fractional shares or interests the owner would otherwise be entitled to receive; and

(3) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration other than:

(A) ownership interests of a domestic entity or non-code organization of the same general organizational type that, immediately after the effective date of the merger, conversion, or exchange, as appropriate, will be part of a class or series of ownership interests that are:

(i) listed on a national securities exchange or authorized for listing on the exchange on official notice of issuance;

(ii) approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or a successor entity; or

(iii) held of record by at least 2,000 owners;

(B) cash instead of fractional ownership interests the owner would otherwise be entitled to receive; or

(C) any combination of the ownership interests and cash described by Paragraphs (A) and (B).

(c) Subsection (b) shall not apply to a domestic entity

that is a subsidiary with respect to a merger under Section 10.006. (TBCA 5.11, 5.16.E (part), 5.20.A (part); TREITA 25.10.)

Source Law

[TBCA]

5.11.A. Any shareholder of a domestic corporation shall have the right to dissent from any of the following corporate actions:

(1) Any plan of merger to which the corporation is a party if shareholder approval is required by Article 5.03 or 5.16 of this Act and the shareholder holds shares of a class or series that was entitled to vote thereon as a class or otherwise;

(2) Any sale, lease, exchange or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without good will, of a corporation if special authorization of the shareholders is required by this Act and the shareholders hold shares of a class or series that was entitled to vote thereon as a class or otherwise;

(3) Any plan of exchange pursuant to Article 5.02 of this Act in which the shares of the corporation of the class or series held by the shareholder are to be acquired.

B. Notwithstanding the provisions of Section A of this Article, a shareholder shall not have the right to dissent from any plan of merger in which there is a single surviving or new domestic or foreign corporation, or from any plan of exchange, if:

(1) the shares held by the shareholder are part of a class or series, shares of which are on the record date fixed to determine the shareholders entitled to vote on the plan of merger or plan of exchange:

(a) listed on a national securities exchange;

(b) listed on the Nasdaq Stock Market (or successor quotation system) or designated as a national market

security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or

(c) held of record by not less than 2,000 holders;

(2) the shareholder is not required by the terms of the plan of merger or plan of exchange to accept for the shareholder's shares any consideration that is different than the consideration (other than cash in lieu of fractional shares that the shareholder would otherwise be entitled to receive) to be provided to any other holder of shares of the same class or series of shares held by such shareholder; and

(3) the shareholder is not required by the terms of the plan of merger or the plan of exchange to accept for the shareholder's shares any consideration other than:

(a) shares of a domestic or foreign corporation that, immediately after the effective time of the merger or exchange, will be part of a class or series, shares of which are:

(i) listed, or authorized for listing upon official notice of issuance, on a national securities exchange;

(ii) approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or

(iii) held of record by not less than 2,000 holders;

(b) cash in lieu of fractional shares otherwise entitled to be received; or

(c) any combination of the securities and cash described in Subdivisions (a) and (b) of this subsection.

[TBCA 5.16]

E. In the event all of the shares of a subsidiary domestic corporation that is a party to a merger effected under this Article are not owned by the parent entity

immediately prior to the merger, the surviving parent entity shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of each subsidiary domestic corporation a copy of the articles of merger and notify the shareholder that the merger has become effective. Any such shareholder who holds shares of a class or series that would have been entitled to vote on the merger if it had been effected pursuant to Article 5.03 of this Act shall have the right to dissent from the merger and

[TBCA 5.20]

A. When a conversion of a converting entity takes effect:

. . . .

(9) if the converting corporation is a domestic corporation, the provisions of Articles 5.11, 5.12, and 5.13 of this Act shall apply as if the converted entity were the survivor of a merger with the converting entity.

[TREITA]

25.10. (A) Any shareholder of a domestic real estate investment trust may dissent from any of the following actions:

(1) any plan of merger to which the real estate investment trust is a party if shareholder approval is required by Section 23.30 of this Act and the shareholder holds shares of a class or series that was entitled to vote on the plan of merger as a class or otherwise;

(2) any sale, lease, exchange, or other disposition (not including any pledge, mortgage, deed of trust, or trust indenture unless otherwise provided in the declaration of trust) of all, or substantially all, of the property and assets, with or without good will, of a real estate investment trust requiring the special authorization of the shareholders as provided by this Act; or

(3) any plan of exchange pursuant to Section 23.20 of this Act in which the shares of the real estate investment trust of

the class or series held by the shareholder are to be acquired.

(B) Notwithstanding Subsection (A) of this Section, a shareholder may not dissent from any plan of merger in which there is a single surviving or new domestic or foreign corporation, real estate investment trust, partnership, or other entity, or from any plan of exchange, if:

(1) the shares held by the shareholder are part of a class or series, and on the record date fixed to determine the shareholders entitled to vote on the plan of merger or plan of exchange, the shares are:

(a) listed on a national securities exchange;

(b) designated as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or

(c) held of record by not less than 2,000 holders; and

(2) the shareholder is not required by the terms of the plan of merger or the plan of exchange to accept any consideration for the shareholder's shares other than:

(a) shares of a domestic or foreign entity that, immediately after the effective date of the merger or exchange, will be part of a class or series, shares of which are (i) listed, or authorized for listing upon official notice of issuance, on a national securities exchange; (ii) approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or (iii) held of record by not less than 2,000 holders;

(b) cash in lieu of fractional shares otherwise entitled to be received; or

(c) any combination of the securities and cash described in this Subdivision.

Revisor's Note

Section 10.354 provides the general rule for when an owner will have a right of dissent and appraisal. No substantive change in these rights is intended. The revised law contains an updated definition of what is a national securities exchange and national automated quotation system for purposes of determining whether there is a public market for the securities that are subject to the transaction. Subsection (c) of the revised law carries forward the source law provisions of the Texas Business Corporation Act that require dissenting owners' rights for owners in subsidiary organizations that are parties to a so-called "short form" merger under Section 10.006.

Revised Law

Sec. 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL. (a) A domestic entity subject to dissenters' rights that takes or proposes to take an action regarding which an owner has a right to dissent and obtain an appraisal under Section 10.354 shall notify each affected owner of the owner's rights under that section if:

(1) the action or proposed action is submitted to a vote of the owners at a meeting; or

(2) approval of the action or proposed action is obtained by written consent of the owners instead of being submitted to a vote of the owners.

(b) If a parent organization effects a merger under Section 10.006 and a subsidiary organization that is a party to the merger is a domestic entity subject to dissenters' rights, the responsible organization shall notify the owners of that subsidiary organization who have a right to dissent to the merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. The notice must also include a copy of the certificate of merger and a statement that the merger has become effective.

(c) A notice required to be provided under Subsection (a) or (b) must:

(1) be accompanied by a copy of this subchapter; and

(2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(2) may be provided.

(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided under Subsection (a)(1) must accompany the notice of the meeting to consider the action, and a notice required under Subsection (a)(2) must be

provided to:

(1) each owner who consents in writing to the action before the owner delivers the written consent; and

(2) each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect.

(e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization shall give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(2). (TBCA 5.03.D, 5.12.A (part), 5.16.E (part); TREITA 23.30(D), 25.20(A) (part).)

Source Law

[TBCA 5.03]

D. The corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of merger or exchange is to be submitted for approval in accordance with Article 2.25 of this Act. The notice shall be given at least 20 days before the meeting and shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or exchange and shall contain or be accompanied by a copy or summary of the plan.

[TBCA 5.12]

A. Any shareholder of any domestic corporation who has the right to dissent from any of the corporate actions referred to in Article 5.11 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) . . . If the action is effected and the shareholder shall not have voted in favor of the action, the corporation, in the case of action other than a merger, or the surviving or new corporation (foreign or domestic) or other entity that is liable to discharge the shareholder's right of dissent, in the case of a merger, shall, within ten (10) days after the action is effected, deliver or mail to the shareholder written notice that the action has been effected, and

(b) With respect to proposed

corporate action that is approved pursuant to Section A of Article 9.10 of this Act, the corporation, in the case of action other than a merger, and the surviving or new corporation (foreign or domestic) or other entity that is liable to discharge the shareholder's right of dissent, in the case of a merger, shall, within ten (10) days after the date the action is effected, mail to each shareholder of record as of the effective date of the action notice of the fact and date of the action and that the shareholder may exercise the shareholder's right to dissent from the action. The notice shall be accompanied by a copy of this Article and any articles or documents filed by the corporation with the Secretary of State to effect the action. . . .

[TBCA 5.16]

E. In the event all of the shares of a subsidiary domestic corporation that is a party to a merger effected under this Article are not owned by the parent entity immediately prior to the merger, the surviving parent entity shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of each subsidiary domestic corporation a copy of the articles of merger and notify the shareholder that the merger has become effective. . . .

[TREITA 23.30]

(D) The real estate investment trust shall notify each shareholder, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the plan of merger or exchange is to be submitted for approval in accordance with Section 11.10 of this Act. The notice shall be given at least 20 days before the meeting and shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or exchange and shall contain or be accompanied by a copy or summary of the plan.

[TREITA 25.20]

(A) Any shareholder of any domestic real estate investment trust who has the right to dissent from any of the actions referred to in Section 25.10 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) . . . If the action is effected and the shareholder did not vote in favor of the action, the real estate investment trust, in the case of action other than a merger, or the surviving or new entity that is liable in the case of a merger to discharge the shareholder's right of dissent, shall deliver or mail to the shareholder written notice that the action has been effected within 10 days after the action is effected. . . .

(b) With respect to a proposed action that is approved pursuant to Subsection (A) of Section 10.30 of this Act, the real estate investment trust, in the case of action other than a merger, and the surviving or new entity that is liable in the case of a merger to discharge the shareholder's right of dissent, within 10 days after the date the action takes effect, shall mail to each shareholder of record as of the date the action takes effect notice of the fact and date of the action and that the shareholder may exercise the shareholder's right to dissent from the action. The notice shall be accompanied by a copy of this Section and any articles or documents filed by the real estate investment trust with the secretary of state to effect the action. . . .

Revisor's Note

Sections 10.355-10.358 and 10.361 standardize the current procedures relating to dissenters' rights contained in the Texas Business Corporation Act and Texas Real Estate Investment Trust Act that must be followed by a domestic entity and dissenting owner. The source laws are inconsistent for different types of transactions. Texas Business Corporation Act Article 5.16.E contains a separate set of provisions

governing dissenters' rights for "short form" mergers, which are different in many respects from the general dissenters' rights provisions in Texas Business Corporation Act Articles 5.11-5.13. The revised law has conformed the various provisions, primarily with Texas Business Corporation Act Articles 5.11-5.13.

Revised Law

Sec. 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS; PERFECTION OF RIGHT OF DISSENT AND APPRAISAL. (a) An owner of an ownership interest of a domestic entity subject to dissenters' rights who has the right to dissent and appraisal from any of the actions referred to in Section 10.354 may exercise that right to dissent and appraisal only by complying with the procedures specified in this subchapter. An owner's right of dissent and appraisal under Section 10.354 may be exercised by an owner only with respect to an ownership interest that is not voted in favor of the action.

(b) To perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:

(1) with respect to the ownership interest for which the rights of dissent and appraisal are sought:

(A) must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners; and

(B) may not consent to the action if the action is approved by written consent; and

(2) must give to the responsible organization a notice dissenting to the action that:

(A) is addressed to the president and secretary of the responsible organization;

(B) demands payment of the fair value of the ownership interests for which the rights of dissent and appraisal are sought;

(C) provides to the responsible organization an address to which a notice relating to the dissent and appraisal procedures under this subchapter may be sent;

(D) states the number and class of the ownership interests of the domestic entity owned by the owner and the fair value of the ownership interests as estimated by the owner; and

(E) is delivered to the responsible organization at its principal executive offices at the following time:

(i) before the action is considered for approval, if the action is to be submitted to a vote of the owners at a meeting;

(ii) not later than the 20th day after the date the responsible organization sends to the owner a notice

that the action was approved by the requisite vote of the owners, if the action is to be undertaken on the written consent of the owners; or

(iii) not later than the 20th day after the date the responsible organization sends to the owner a notice that the merger was effected, if the action is a merger effected under Section 10.006.

(c) An owner who does not make a demand within the period required by Subsection (b)(2)(E) is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.

(d) Not later than the 20th day after the date an owner makes a demand under this section, the owner must submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment of the fair value of an ownership interest has been made under this section. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner's rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.

(e) If a domestic entity and responsible organization satisfy the requirements of this subchapter relating to the rights of owners of ownership interests in the entity to dissent to an action and seek appraisal of those ownership interests, an owner of an ownership interest who fails to perfect that owner's right of dissent in accordance with this subchapter may not bring suit to recover the value of the ownership interest or money damages relating to the action. (TBCA 5.12.A (part), G (part), 5.13.B (part), 5.16.E (part); TREITA 25.20(A) (part), (G) (part), 25.30(B) (part).)

Source Law

[TBCA 5.12]

A. Any shareholder of any domestic corporation who has the right to dissent from any of the corporate actions referred to in Article 5.11 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) With respect to proposed corporate action that is submitted to a vote of shareholders at a meeting, the shareholder shall file with the corporation, prior to the meeting, a written objection to the action, setting out that the shareholder's right to dissent will be exercised if the action is

effective and giving the shareholder's address, to which notice thereof shall be delivered or mailed in that event. . . . the shareholder may, within ten (10) days from the delivery or mailing of the notice, make written demand on the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the day immediately preceding the meeting, excluding any appreciation or depreciation in anticipation of the proposed action. The demand shall state the number and class of the shares owned by the shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the ten (10) day period shall be bound by the action.

(b) . . . If the shareholder shall not have consented to the taking of the action, the shareholder may, within twenty (20) days after the mailing of the notice, make written demand on the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the date the written consent authorizing the action was delivered to the corporation pursuant to Section A of Article 9.10 of this Act, excluding any appreciation or depreciation in anticipation of the action. The demand shall state the number and class of shares owned by the dissenting shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the twenty (20) day period shall be bound by the action.

. . .

G. . . . If the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, complies with the requirements of this Article, any shareholder who fails to comply with the

requirements of this Article shall not be entitled to bring suit for the recovery of the value of his shares or money damages to the shareholder with respect to the action.

[TBCA 5.13]

B. . . . Within twenty (20) days after demanding payment for his shares in accordance with either Article 5.12 or 5.16 of this Act, each holder of certificates representing shares so demanding payment shall submit such certificates to the corporation for notation thereon that such demand has been made. The failure of holders of certificated shares to do so shall, at the option of the corporation, terminate such shareholder's rights under Articles 5.12 and 5.16 of this Act unless a court of competent jurisdiction for good and sufficient cause shown shall otherwise direct. . . .

[TBCA 5.16]

E. . . . Any such shareholder who holds shares of a class or series that would have been entitled to vote on the merger if it had been effected pursuant to Article 5.03 of this Act shall have the right to dissent from the merger and demand payment of the fair value for the shareholder's shares in lieu of the cash or other property to be used, paid or delivered to such shareholder upon the surrender of such shareholder's shares pursuant to the terms and conditions of the merger, with the following procedure:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of the articles of merger make written demand on the surviving parent entity for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such act. The demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by the shareholder. Any shareholder failing to make

demand within the twenty (20) day period shall be bound by the corporate action.

. . .

(5) . . . If the surviving entity complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of the shareholder's shares or money damages to such shareholder with respect to such corporate action.

[TREITA 25.20]

(A) Any shareholder of any domestic real estate investment trust who has the right to dissent from any of the actions referred to in Section 25.10 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) With respect to a proposed action that is submitted to a vote of shareholders at a meeting, the shareholder shall file with the real estate investment trust, before the meeting, a written objection to the action. The shareholder's objection must state that the shareholder will exercise the shareholder's right to dissent if the action is effective and must contain the shareholder's address, to which notice of the action shall be delivered or mailed in that event. . . . The shareholder may make a written demand on the existing, surviving, or new entity for payment of the fair value of the shareholder's shares within 10 days from the delivery or mailing of the notice. The fair value of the shares shall be the value of the shares on the day before the meeting, excluding any appreciation or depreciation in anticipation of the proposed action. The demand shall state the number and class of the shares owned by the shareholder and the fair value of the shares as estimated by the shareholder. A shareholder who fails to make a demand within the 10-day period is bound by the action.

(b) . . . If the shareholder did not consent to the taking of the action, the shareholder may make written demand on

the existing, surviving, or new entity for payment of the fair value of the shareholder's shares within 20 days after the mailing of the notice. The fair value of the shares shall be the value of the shares on the date the written consent authorizing the action was delivered to the real estate investment trust pursuant to Subsection (A) of Section 10.30 of this Act, excluding any appreciation or depreciation in anticipation of the action. The demand shall state the number and class of shares owned by the dissenting shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the 20-day period is bound by the action.

. . .

(G) . . . If the existing, surviving, or new entity complies with the requirements of this Section, any shareholder who fails to comply with the requirements of this Section is not entitled to bring suit for the recovery of the value of the shareholder's shares or money damages to the shareholder with respect to the action.

[TREITA 25.30]

(B) . . . Within 20 days after demanding payment for shares in accordance with Section 25.20 of this Act, each holder of certificates representing those shares shall submit the certificates to the real estate investment trust for notation on the certificates that such demand has been made. The failure of holders of certificated shares to submit the certificates to the real estate investment trust, at the option of the real estate investment trust, shall terminate the shareholder's rights under Section 25.20 of this Act unless a court of competent jurisdiction for good and sufficient cause shown directs otherwise. . . .

Revisor's Note

Other than as described in the Revisor's Note to Section 10.355, no substantive change is intended.

Revised Law

Sec. 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) An owner may withdraw a demand for the payment of the fair value of an ownership interest made under Section 10.356 before:

(1) payment for the ownership interest has been made under Sections 10.358 and 10.361; or

(2) a petition has been filed under Section 10.361.

(b) Unless the responsible organization consents to the withdrawal of the demand, an owner may not withdraw a demand for payment under Subsection (a) after either of the events specified in Subsections (a)(1) and (2). (TBCA 5.13.C (part); TREITA 25.30(C) (part).)

Source Law

[TBCA 5.13]

C. Any shareholder who has demanded payment for his shares in accordance with either Article 5.12 or 5.16 of this Act may withdraw such demand at any time before payment for his shares or before any petition has been filed pursuant to Article 5.12 or 5.16 of this Act asking for a finding and determination of the fair value of such shares, but no such demand may be withdrawn after such payment has been made or, unless the corporation shall consent thereto, after any such petition has been filed. . . .

[TREITA 25.30]

(C) Any shareholder who has demanded payment for the shareholder's shares in accordance with Section 25.20 of this Act may withdraw that demand at any time before payment of those shares has been made or before any petition has been filed pursuant to Section 25.20 of this Act. The demand may not be withdrawn after the payment of the shares has been made or after any such petition has been filed, unless the real estate investment trust consents to the withdrawal of the demand. . . .

Revisor's Note

Other than as described in the Revisor's Note to Section 10.355, no substantive change is intended.

Revised Law

Sec. 10.358. RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER. (a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356, the responsible organization shall respond to the dissenting owner in writing by:

- (1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or
- (2) rejecting the demand and including in the response the requirements prescribed by Subsection (c).

(b) If the responsible organization accepts the amount claimed in the demand, the responsible organization shall pay the amount not later than the 90th day after the date the action that is the subject of the demand was effected if the owner delivers to the responsible organization:

- (1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
- (2) signed assignments of the ownership interests if the ownership interests are uncertificated.

(c) If the responsible organization rejects the amount claimed in the demand, the responsible organization shall provide to the owner:

- (1) an estimate by the responsible organization of the fair value of the ownership interests; and
- (2) an offer to pay the amount of the estimate provided under Subdivision (1).

(d) An offer made under Subsection (c)(2) must remain open for a period of at least 60 days from the date the offer is first delivered to the dissenting owner.

(e) If a dissenting owner accepts an offer made by a responsible organization under Subsection (c)(2) or if a dissenting owner and a responsible organization reach an agreement on the fair value of the ownership interests, the responsible organization shall pay the agreed amount not later than the 60th day after the date the offer is accepted or the agreement is reached, as appropriate, if the dissenting owner delivers to the responsible organization:

- (1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
- (2) signed assignments of the ownership interests if the ownership interests are uncertificated. (TBCA 5.12.A (part), 5.16.E (part); TREITA 25.20(A) (part).)

Source Law

[TBCA 5.12]

A. Any shareholder of any domestic corporation who has the right to dissent from

any of the corporate actions referred to in Article 5.11 of this Act may exercise that right to dissent only by complying with the following procedures:

. . . .

(2) Within twenty (20) days after receipt by the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, of a demand for payment made by a dissenting shareholder in accordance with Subsection (1) of this Section, the corporation (foreign or domestic) or other entity shall deliver or mail to the shareholder a written notice that shall either set out that the corporation (foreign or domestic) or other entity accepts the amount claimed in the demand and agrees to pay that amount within ninety (90) days after the date on which the action was effected, and, in the case of shares represented by certificates, upon the surrender of the certificates duly endorsed, or shall contain an estimate by the corporation (foreign or domestic) or other entity of the fair value of the shares, together with an offer to pay the amount of that estimate within ninety (90) days after the date on which the action was effected, upon receipt of notice within sixty (60) days after that date from the shareholder that the shareholder agrees to accept that amount and, in the case of shares represented by certificates, upon the surrender of the certificates duly endorsed.

(3) If, within sixty (60) days after the date on which the corporate action was effected, the value of the shares is agreed upon between the shareholder and the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, payment for the shares shall be made within ninety (90) days after the date on which the action was effected and, in the case of shares represented by certificates, upon surrender of the certificates duly endorsed. [Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares or in the

corporation.]

[TBCA 5.16]

E. . . .

(2) Within ten (10) days after receipt by the surviving entity of a demand for payment by the dissenting shareholder of the fair value of the shareholder's shares in accordance with Subsection (1) of this section, the surviving entity shall deliver or mail to the dissenting shareholder a written notice which shall either set out that the surviving entity accepts the amount claimed in the demand and agrees to pay such amount within ninety (90) days after the date on which the corporate action was effected and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed, or shall contain an estimate by the surviving parent entity of the fair value of such shares, together with an offer to pay the amount of that estimate within ninety (90) days after the date on which such corporate action was effected, upon receipt of notice within sixty (60) days after that date from the shareholder that the shareholder agrees to accept that amount and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed.

(3) If, within sixty (60) days after the date on which the corporate action was effected, the value of the shares is agreed upon between the dissenting shareholder and the surviving entity, payment for the shares shall be made within ninety (90) days after the date on which the corporate action was effected and, in the case of shares represented by certificates, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

. . . .

[TREITA 25.20]

(A) Any shareholder of any domestic real estate investment trust who has the right to dissent from any of the actions referred to in Section 25.10 of this Act may exercise that right to dissent only by complying with the following procedures:

. . .

(2) Within 20 days after receipt by the existing, surviving, or new entity of a demand for payment made by a dissenting shareholder in accordance with Subdivision (1) of this Subsection, the entity shall deliver or mail to the shareholder a written notice that shall either set out that the entity accepts the amount claimed in the demand and agrees to pay that amount within 90 days after the date on which the action was effected, and, in the case of shares represented by certificates, on the surrender of the certificates duly endorsed, or shall contain an estimate by the entity of the fair value of the shares and an offer to pay the amount of that estimate within 90 days after the date on which the action was effected, on receipt of notice within 60 days after that date from the shareholder that the shareholder agrees to accept that amount and, in the case of shares represented by certificates, on the surrender of the certificates duly endorsed.

(3) If, within 60 days after the date on which the real estate investment trust action was effected, the value of the shares is agreed on between the shareholder and the existing, surviving, or new entity, payment for the shares shall be made within 90 days after the date on which the action was effected and, in the case of shares represented by certificates, on surrender of the certificates duly endorsed. On payment of the agreed value, the shareholder ceases to have any interest in the shares or in the real estate investment trust.

Revisor's Note

Other than as described in the Revisor's Note to Section 10.355, no substantive change is intended.

Revised Law

Sec. 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) A responsible organization shall note in the organization's ownership interest records maintained under Section 3.151 the receipt of a demand for payment from any dissenting owner made under Section 10.356.

(b) If an ownership interest that is the subject of a demand for payment made under Section 10.356 is transferred, a new certificate representing that ownership interest must contain:

- (1) a reference to the demand; and
- (2) the name of the original dissenting owner of the ownership interest. (TBCA 5.13.B (part); TREITA 25.30(B) (part).)

Source Law

[TBCA 5.13]

B. Upon receiving a demand for payment from any dissenting shareholder, the corporation shall make an appropriate notation thereof in its shareholder records. . . . If uncertificated shares for which payment has been demanded or shares represented by a certificate on which notation has been so made shall be transferred, any new certificate issued therefor shall bear similar notation together with the name of the original dissenting holder of such shares and

[TREITA 25.30]

(B) On receiving a demand for payment from any dissenting shareholder, the real estate investment trust shall make an appropriate notation of the demand in its shareholder records. . . . If uncertificated shares for which payment has been demanded or shares represented by a certificate on which the real estate investment trust has made a notation under this Subsection are transferred, any new certificate issued for those shares shall bear similar notation together with the name of the original dissenting holder of those shares, and

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.360. RIGHTS OF TRANSFEREE OF CERTAIN OWNERSHIP INTEREST. A transferee of an ownership interest that is the subject of a demand for payment made under Section 10.356 does not acquire additional rights with respect to the responsible organization following the transfer. The transferee has only the rights the original dissenting owner had with respect to the responsible organization after making the demand. (TBCA 5.13.B (part); TREITA 25.30(B) (part).)

Source Law

[TBCA 5.13]

B. . . . a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

[TREITA 25.30]

(B) . . . a transferee of those shares shall acquire by the transfer no rights in the real estate investment trust other than those which the original dissenting shareholder had after making demand for payment of the fair value of the shares.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF APPRAISERS. (a) If a responsible organization rejects the amount demanded by a dissenting owner under Section 10.358 and the dissenting owner and responsible organization are unable to reach an agreement relating to the fair value of the ownership interests within the period prescribed by Section 10.358(d), the dissenting owner or responsible organization may file a petition requesting a finding and determination of the fair value of the owner's ownership interests in a court in:

(1) the county in which the organization's principal office is located in this state; or

(2) the county in which the organization's registered office is located in this state, if the organization does not have a business office in this state.

(b) A petition described by Subsection (a) must be filed not later than the 60th day after the expiration of the period required by Section 10.358(d).

(c) On the filing of a petition by an owner under Subsection (a), service of a copy of the petition shall be made to the responsible organization. Not later than the 10th day after the date a responsible organization receives service under this subsection, the responsible organization shall file with the clerk of the court in which the petition was filed a list containing the names and addresses of each owner of the organization who has demanded payment for ownership interests under Section 10.356 and with whom agreement as to the value of the ownership interests has not been reached with the responsible organization. If the responsible organization files a petition under Subsection (a), the petition must be accompanied by this list.

(d) The clerk of the court in which a petition is filed under this section shall provide by registered mail notice of the time and place set for the hearing to:

- (1) the responsible organization; and
- (2) each owner named on the list described by Subsection (c) at the address shown for the owner on the list.

(e) The court shall:

- (1) determine which owners have:
 - (A) perfected their rights by complying with this subchapter; and
 - (B) become subsequently entitled to receive payment for the fair value of their ownership interests; and
- (2) appoint one or more qualified appraisers to determine the fair value of the ownership interests of the owners described by Subdivision (1).

(f) The court shall approve the form of a notice required to be provided under this section. The judgment of the court is final and binding on the responsible organization, any other organization obligated to make payment under this subchapter for an ownership interest, and each owner who is notified as required by this section. (TBCA 5.12.B, C (part), 5.16.E (part); TREITA 25.20(B), (C) (part).)

Source Law

[TBCA 5.12]

B. If, within the period of sixty (60) days after the date on which the corporate action was effected, the shareholder and the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, do not so agree, then the shareholder or the corporation (foreign or domestic) or other entity may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court

of competent jurisdiction in the county in which the principal office of the domestic corporation is located, asking for a finding and determination of the fair value of the shareholder's shares. Upon the filing of any such petition by the shareholder, service of a copy thereof shall be made upon the corporation (foreign or domestic) or other entity, which shall, within ten (10) days after service, file in the office of the clerk of the court in which the petition was filed a list containing the names and addresses of all shareholders of the domestic corporation who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation (foreign or domestic) or other entity. If the petition shall be filed by the corporation (foreign or domestic) or other entity, the petition shall be accompanied by such a list. The clerk of the court shall give notice of the time and place fixed for the hearing of the petition by registered mail to the corporation (foreign or domestic) or other entity and to the shareholders named on the list at the addresses therein stated. The forms of the notices by mail shall be approved by the court. All shareholders thus notified and the corporation (foreign or domestic) or other entity shall thereafter be bound by the final judgment of the court.

C. After the hearing of the petition, the court shall determine the shareholders who have complied with the provisions of this Article and have become entitled to the valuation of and payment for their shares, and shall appoint one or more qualified appraisers to determine that value. . . .

[TBCA 5.16]

E. . . .

(4) If, within sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving entity do not so agree, then the dissenting shareholder or the surviving entity may, within sixty (60) days after the

expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of the shareholder's shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12.

. . .

[TREITA 25.20]

(B) If, within 60 days after the date on which the action was effected, the shareholder and the existing, surviving, or new entity do not agree on the value of the shares, the shareholder or entity, within 60 days after the expiration of the 60-day period, may file a petition in any court of competent jurisdiction in the county in which the principal office of the domestic real estate investment trust is located, asking for a finding and determination of the fair value of the shareholder's shares. On the filing of a petition by the shareholder, service of a copy of the petition must be made on the entity. The entity, within 10 days after receiving the service, shall file in the office of the clerk of the court in which the petition was filed a list containing the names and addresses of all shareholders of the domestic real estate investment trust who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the entity. If the petition is filed by the entity, the list described in this Subsection must be attached to the petition. The clerk of the court shall give notice of the time and place fixed for the hearing of the petition by registered mail to the entity and to the shareholders named on the list at the addresses stated in the list. The court shall approve the forms of notices sent by mail. All shareholders notified as required by this Subsection and the entity

are bound by the final judgment of the court.

(C) After the hearing of a petition filed under this Section, the court shall determine which shareholders have complied with the provisions of this Section and have become entitled to the valuation of and payment of their shares. The court shall appoint one or more qualified appraisers to determine that value. . . .

Revisor's Note

Other than as described in the Revisor's Note to Section 10.355, no substantive change is intended.

Revised Law

Sec. 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF OWNERSHIP INTEREST. (a) For purposes of this subchapter, the fair value of an ownership interest of a domestic entity subject to dissenters' rights is the value of the ownership interest on the date preceding the date of the action that is the subject of the appraisal. Any appreciation or depreciation in the value of the ownership interest occurring in anticipation of the proposed action or as a result of the action must be specifically excluded from the computation of the fair value of the ownership interest.

(b) In computing the fair value of an ownership interest under this subchapter, consideration must be given to the value of the organization as a going concern without including in the computation of value any:

(1) payment for a control premium or minority discount other than a discount attributable to the type of ownership interests held by the dissenting owner; and

(2) limitation placed on the rights and preferences of those ownership interests.

(c) The determination of the fair value of an ownership interest made for purposes of this subchapter may not be used for purposes of making a determination of the fair value of that ownership interest for another purpose or of the fair value of another ownership interest, including for purposes of determining any minority or liquidity discount that might apply to a sale of an ownership interest. (TBCA 5.12.A(1) (part).)

Source Law

(1)(a) . . . The fair value of the shares shall be the value thereof as of the day immediately preceding the meeting, excluding any appreciation or depreciation in anticipation of the proposed action. . . .

(b) . . . The fair value of

the shares shall be the value thereof as of the date the written consent authorizing the action was delivered to the corporation pursuant to Section A of Article 9.10 of this Act, excluding any appreciation or depreciation in anticipation of the action. . . .

Revisor's Note

Section 10.362 provides for the method of determining the fair value of an ownership interest in an organization that is subject to a demand for appraisal under the code. The section provides rules as to how "fair value" is to be determined. Section 10.362(a) codifies the source law that the valuation is to be made as of the date of the fundamental business transaction without giving any value for appreciation or depreciation occurring in anticipation of the transaction or as a result of the transaction. To clarify the determination, Section 10.362(b) adds that the value should be based on a going concern basis without giving effect to any "control premium," "minority discount," or limitation on the rights or preferences of the ownership interests. The methodology provided in the revised law is consistent with that applied in other states and provides greater certainty to the appraisal process.

Revised Law

Sec. 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL PROCEDURES. (a) An appraiser appointed under Section 10.361 has the power and authority that:

(1) is granted by the court in the order appointing the appraiser; and

(2) may be conferred by a court to a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.

(b) The appraiser shall:

(1) determine the fair value of an ownership interest of an owner adjudged by the court to be entitled to payment for the ownership interest; and

(2) file with the court a report of that determination.

(c) The appraiser is entitled to examine the books and records of a responsible organization and may conduct investigations as the appraiser considers appropriate. A

dissenting owner or responsible organization may submit to an appraiser evidence or other information relevant to the determination of the fair value of the ownership interest required by Subsection (b)(1).

(d) The clerk of the court appointing the appraiser shall provide notice of the filing of the report under Subsection (b) to each dissenting owner named in the list filed under Section 10.361 and the responsible organization. (TBCA 5.12.C (part), D (part); TREITA 25.20(C) (part), (D) (part).)

Source Law

[TBCA 5.12]

C. . . . The appraisers shall have power to examine any of the books and records of the corporation the shares of which they are charged with the duty of valuing, and they shall make a determination of the fair value of the shares upon such investigation as to them may seem proper. The appraisers shall also afford a reasonable opportunity to the parties interested to submit to them pertinent evidence as to the value of the shares. The appraisers shall also have such power and authority as may be conferred on Masters in Chancery by the Rules of Civil Procedure or by the order of their appointment.

D. The appraisers shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment for their shares and shall file their report of that value in the office of the clerk of the court. Notice of the filing of the report shall be given by the clerk to the parties in interest. . . .

[TREITA 25.20]

(C) . . . The appraisers may examine any books and records of the real estate investment trust that relate to the shares the appraisers are charged with the duty of valuing. The appraisers shall make a determination of the fair value of the shares after conducting an investigation. The appraisers shall also afford a reasonable opportunity to allow interested parties to submit to the appraisers pertinent evidence relating to the value of the shares. The

appraisers also have the power and authority that may be conferred on masters in chancery by the Texas Rules of Civil Procedure.

(D) The appraisers shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment for their shares and shall file their report of that value in the office of the clerk of the court. The clerk shall give notice of the filing of the appraisers report to interested parties. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.364. OBJECTION TO APPRAISAL; HEARING. (a) A dissenting owner or responsible organization may object, based on the law or the facts, to all or part of an appraisal report containing the fair value of an ownership interest determined under Section 10.363(b).

(b) If an objection to a report is raised under Subsection (a), the court shall hold a hearing to determine the fair value of the ownership interest that is the subject of the report. After the hearing, the court shall require the responsible organization to pay to the holders of the ownership interest the amount of the determined value with interest, accruing from the 91st day after the date the applicable action for which the owner elected to dissent was effected until the date of the judgment.

(c) Interest under Subsection (b) accrues at the same rate as is provided for the accrual of prejudgment interest in civil cases.

(d) The responsible organization shall:

(1) immediately pay the amount of the judgment to a holder of an uncertificated ownership interest; and

(2) pay the amount of the judgment to a holder of a certificated ownership interest immediately after the certificate holder surrenders to the responsible organization an endorsed certificate representing the ownership interest.

(e) On payment of the judgment, the dissenting owner does not have an interest in the:

(1) ownership interest for which the payment is made; or

(2) responsible organization with respect to that ownership interest. (TBCA 5.12.D (part); TREITA 25.20(D) (part).)

Source Law

[TBCA 5.12]

D. . . . The report shall be subject

to exceptions to be heard before the court both upon the law and the facts. The court shall by its judgment determine the fair value of the shares of the shareholders entitled to payment for their shares and shall direct the payment of that value by the existing, surviving, or new corporation (foreign or domestic) or other entity, together with interest thereon, beginning 91 days after the date on which the applicable corporate action from which the shareholder elected to dissent was effected to the date of such judgment, to the shareholders entitled to payment. The judgment shall be payable to the holders of uncertificated shares immediately but to the holders of shares represented by certificates only upon, and simultaneously with, the surrender to the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, of duly endorsed certificates for those shares. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in those shares or in the corporation. The court shall allow the appraisers a reasonable fee as court costs, and all court costs shall be allotted between the parties in the manner that the court determines to be fair and equitable.

[TREITA 25.20]

(D) . . . The appraisers report shall be subject to exceptions to be heard before the court both on the law and the facts. The court shall determine the fair value of the shares of the shareholders entitled to payment for their shares and shall order the existing, surviving, or new entity to pay that value, together with interest on the value of shares to the shareholders entitled to payment, beginning 91 days after the date on which the applicable action from which the shareholder elected to dissent was effected to the date of such judgment. The judgment shall be immediately payable to the holders of uncertificated shares. The judgment shall be payable to the holders of shares represented by certificates only on, and

simultaneously with, the surrender to the existing, surviving, or new entity of duly endorsed certificates for those shares. On payment of the judgment, the dissenting shareholders cease to have any interest in those shares or in the real estate investment trust. The court shall allow the appraisers a reasonable fee as court costs, and all court costs shall be allocated between the parties in the manner that the court determines to be fair and equitable.

Revisor's Note

No substantive change is intended. Subsection (c) clarifies the rate of interest that accrues on the amount payable by the responsible organization.

Revised Law

Sec. 10.365. COURT COSTS; COMPENSATION FOR APPRAISER. (a) An appraiser appointed under Section 10.361 is entitled to a reasonable fee payable from court costs.

(b) All court costs shall be allocated between the responsible organization and the dissenting owners in the manner that the court determines to be fair and equitable. (TBCA 5.12.D (part); TREITA 25.20(D) (part).)

Source Law

[TBCA 5.12]

D. . . . The court shall allow the appraisers a reasonable fee as court costs, and all court costs shall be allotted between the parties in the manner that the court determines to be fair and equitable.

[TREITA 25.20]

(D) . . . The court shall allow the appraisers a reasonable fee as court costs, and all court costs shall be allocated between the parties in the manner that the court determines to be fair and equitable.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY HELD BY DISSENTING OWNER. (a) An ownership interest of an organization acquired by a responsible organization under this subchapter:

(1) in the case of a merger, conversion, or interest exchange, shall be held or disposed of as provided in the plan of merger, conversion, or interest exchange; and

(2) in any other case, may be held or disposed of by the responsible organization in the same manner as other ownership interests acquired by the organization or held in its treasury.

(b) An owner who has demanded payment for the owner's ownership interest under Section 10.356 is not entitled to vote or exercise any other rights of another owner with respect to the ownership interest except the right to:

(1) receive payment for the ownership interest under this subchapter; and

(2) bring an appropriate action to obtain relief on the ground that the action to which the demand relates would be or was fraudulent.

(c) An ownership interest for which payment has been demanded under Section 10.356 may not be considered outstanding for purposes of any subsequent vote or action. (TBCA 5.12.E, 5.13.A; TREITA 25.20(E), 25.30(A).)

Source Law

[TBCA 5.12]

E. Shares acquired by the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, pursuant to the payment of the agreed value of the shares or pursuant to payment of the judgment entered for the value of the shares, as in this Article provided, shall, in the case of a merger, be treated as provided in the plan of merger and, in all other cases, may be held and disposed of by the corporation as in the case of other treasury shares.

[TBCA 5.13]

A. Any shareholder who has demanded payment for his shares in accordance with either Article 5.12 or 5.16 of this Act shall not thereafter be entitled to vote or exercise any other rights of a shareholder except the right to receive payment for his shares pursuant to the provisions of those articles and the right to maintain an appropriate action to obtain relief on the ground that the corporate action would be or was fraudulent, and the respective shares for

which payment has been demanded shall not thereafter be considered outstanding for the purposes of any subsequent vote of shareholders.

[TREITA 25.20]

(E) Shares acquired by the existing, surviving, or new entity, pursuant to the payment of the agreed value of the shares, to the payment of the agreed value of the shares, or to payment of the judgment entered for the value of the shares, as provided in this Section, in the case of a merger, shall be treated as provided in the plan of merger and, in all other cases, may be held and disposed of by the real estate investment trust as in the case of other treasury shares.

[TREITA 25.30]

(A) Any shareholder who has demanded payment for the shareholder's shares in accordance with Section 25.20 of this Act is not entitled to vote or exercise any other rights of a shareholder except the right to receive payment for the shareholder's shares pursuant to the provisions of that Section and the right to maintain an appropriate action to obtain relief on the ground that the action would be or was fraudulent. The respective shares for which payment has been demanded may not be considered outstanding for the purposes of any subsequent vote of shareholders.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF RIGHT OF DISSENT. (a) The rights of a dissenting owner terminate if:

- (1) the owner withdraws the demand under Section 10.356;
- (2) the owner's right of dissent is terminated under Section 10.356;
- (3) a petition is not filed within the period required by Section 10.361; or
- (4) after a hearing held under Section 10.361, the

court adjudges that the owner is not entitled to elect to dissent from an action under this subchapter.

(b) On termination of the right of dissent under this section:

(1) the dissenting owner and all persons claiming a right under the owner are conclusively presumed to have approved and ratified the action to which the owner dissented and are bound by that action;

(2) the owner's right to be paid the fair value of the owner's ownership interests ceases and the owner's status as an owner of those ownership interests is restored without prejudice in any interim proceeding if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent fundamental business transaction; and

(3) the dissenting owner is entitled to receive dividends or other distributions made in the interim to owners of the same class and series of ownership interests held by the owner as if a demand for the payment of the ownership interests had not been made under Section 10.356, subject to any change in or adjustment to ownership interests because of the cancellation or exchange of the ownership interests after the date a demand under Section 10.356 was made pursuant to a fundamental business transaction. (TBCA 5.13.C (part); TREITA 25.30(C) (part).)

Source Law

[TBCA 5.13]

C. . . . If, however, such demand shall be withdrawn as hereinbefore provided, or if pursuant to Section B of this Article the corporation shall terminate the shareholder's rights under Article 5.12 or 5.16 of this Act, as the case may be, or if no petition asking for a finding and determination of fair value of such shares by a court shall have been filed within the time provided in Article 5.12 or 5.16 of this Act, as the case may be, or if after the hearing of a petition filed pursuant to Article 5.12 or 5.16, the court shall determine that such shareholder is not entitled to the relief provided by those articles, then, in any such case, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the corporate action from which he dissented and shall be bound thereby, the right of such shareholder to be paid the fair value of his shares shall cease, and his status as a

shareholder shall be restored without prejudice to any corporate proceedings which may have been taken during the interim, and such shareholder shall be entitled to receive any dividends or other distributions made to shareholders in the interim.

[TREITA 25.30]

(C) . . . The shareholder and all persons claiming under the shareholder shall be conclusively presumed to have approved and ratified the action from which the shareholder dissented and shall be bound by the action, the rights of the shareholder to be paid the fair value of the shareholder's shares shall cease, and the shareholder's status as a shareholder shall be restored without prejudice to any proceedings that may have been taken during the interim, and the shareholder is entitled to receive any dividends or other distributions made to the shareholders in the interim if:

(1) the demand is withdrawn as provided in this Subsection;

(2) pursuant to Subsection (B) of this Section, the demand terminates the shareholder's rights under Section 25.20 of this Act;

(3) no petition asking for a court finding and determination of fair value of such shares has been filed within the time provided in Section 25.20 of this Act; or

(4) the court determines, after the hearing of a petition filed under Section 25.20, that the shareholder is not entitled to the relief provided by that Section.

Revisor's Note

No substantive change is intended. Subdivisions (2) and (3) of Subsection (b) clarify the effects on an owner's ownership interest if other transactions have occurred subsequent to the time of the owner's demand for an appraisal and prior to the termination of the owner's right of dissent.

Revised Law

Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND APPRAISAL. In the absence of fraud in the transaction, any right

of an owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of:

- (1) the value of the ownership interest or money damages to the owner with respect to the ownership interest; and
- (2) the owner's right in the organization with respect to a fundamental business transaction. (TBCA 5.12.G (part), 5.16.E (part); TREITA 25.20(G) (part).)

Source Law

[TBCA 5.12]

G. In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to any corporate action referred to in Article 5.11 of this Act is the exclusive remedy for the recovery of the value of his shares or money damages to the shareholder with respect to the action. . . .

[TBCA 5.16]

E. . . .

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to the corporate action is the exclusive remedy for the recovery of the value of the shareholder's shares or money damages to the shareholder with respect to the corporate action. . . .

[TREITA 25.20]

(G) In the absence of fraud in the transaction, the remedy provided by this Section to a shareholder objecting to any action referred to in Section 25.10 of this Act is the exclusive remedy for the recovery of the value of the shareholder's shares or money damages to the shareholder with respect to the action. . . .

Revisor's Note

No substantive change is intended.

[Sections 10.369-10.900 reserved for expansion]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 10.901. CREDITORS; ANTITRUST. This code does not affect, nullify, or repeal the antitrust laws or abridge any

right or rights of any creditor under existing laws. (TBCA 5.15.)

Source Law

5.15. Nothing contained in Part 5 of this Act shall ever be construed as affecting, nullifying or repealing the Anti-trust laws or as abridging any right or rights of any creditor under existing laws.

Revisor's Note

No substantive change is intended. The revised law is derived from the Texas Business Corporation Act but may be implied in the other source laws for Chapter 10.

Revised Law

Sec. 10.902. NONEXCLUSIVITY. This chapter does not limit the power of a domestic entity or non-code organization to acquire all or part of the ownership or membership interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise. (TBCA 5.01.E, 5.02.E; TREITA 23.10(E), 23.20(E).)

Source Law

[TBCA 5.01]

E. This Article does not limit the power of a domestic or foreign corporation or other entity to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

[TBCA 5.02]

E. This Article does not limit the power of a domestic or foreign corporation or other entity to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

[TREITA 23.10]

(E) This Section does not limit the power of a domestic or foreign corporation, real estate investment trust, partnership, or other entity to acquire all or part of the shares of one or more classes or series of a domestic real estate investment trust through a voluntary exchange or otherwise.

[TREITA 23.20]

(E) This Section does not limit the power of a domestic or foreign corporation, real estate investment trust, partnership, or other entity to acquire all or part of the shares of one or more classes or series of a domestic real estate investment trust through a voluntary exchange or otherwise.

Revisor's Note

No substantive change is intended. The revised law is derived from the Texas Business Corporation Act and Texas Real Estate Investment Trust Act but may be implied in the other source laws for Chapter 10.

CHAPTER 11. WINDING UP AND TERMINATION OF DOMESTIC ENTITY
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 11.001. DEFINITIONS. In this chapter:

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

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

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

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

(B) a contractual obligation incurred after termination.

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

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

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

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

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

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

(8) "Winding up" means the process of winding up the

business and affairs of a domestic entity as a result of the occurrence of an event requiring winding up. (TBCA 7.12.F; TNPCA 7.12.H; TLLCA 8.12.A.)

Source Law

[TBCA 7.12]

F. In this Article:

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

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

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

[TNPCA 7.12]

H. In this article:

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

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

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

(c) by expiration of its

period of duration if the corporation has not revived its existence as provided in this Act.

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

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

[TLLCA 8.12]

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

Revisor's Note

Section 11.001 defines terms used in the chapter. Existing terminology and processes for the termination of the existence of a corporation and partnership vary. For example, a corporation's business and affairs are "liquidated" before the formal filing effecting a "dissolution," whereas a limited partnership's business and affairs are "wound up" after the occurrence of an event resulting in "dissolution." The code standardizes the language and processes relating to the winding up and termination of all domestic entities; however, Chapter 11 does not apply to unincorporated nonprofit associations by virtue of Section 252.017. Because most of Chapter 11 is derived from the Texas Business Corporation Act and Texas Non-Profit Corporation Act, it does not represent a material change for entities whose source governing laws incorporate the Texas Business Corporation Act or Texas Non-Profit Corporation Act by reference, such as the Texas Professional Corporation Act, Texas Professional Association Act, Cooperative Association Act, Texas Real Estate Investment Trust Act, and Texas Limited Liability Company Act.

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

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

[Sections 11.002-11.050 reserved for expansion]

SUBCHAPTER B. WINDING UP OF DOMESTIC ENTITY

Revised Law

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

- (1) the expiration of the domestic entity's period of duration, if not perpetual;
- (2) a voluntary decision to wind up the domestic entity;
- (3) an event specified in the governing documents of the domestic entity requiring the winding up, dissolution, or termination of the domestic entity;
- (4) an event specified in this code requiring the winding up or termination of the domestic entity; or
- (5) a decree by a court requiring the winding up or dissolution of the domestic entity, rendered under this code or other law. (TBCA 6.01 (part), 6.02.A, 6.03.A (part), 7.01.A (part), B (part), F (part), 7.09 (part), 7.12.E (part); TLLCA 6.01.A (part); TNPCA 6.01.A (part), 7.01.A (part), B (part), F

(part), 7.09 (part), 7.12.G (part); TPAA 8(B) (part); TREITA 3.10(A) (part), 19.10 (part); TRLPA 8.01, 8.02 (part); TRPA 8.01(a), (b), (c), (d), (e).)

Source Law

[TBCA]

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

. . . .

[TBCA 6.02]

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

[TBCA 6.03]

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

. . . .

[TBCA 7.01]

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

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

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

[TBCA]

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

[TBCA 7.12]

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

[TLLCA 6.01]

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

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

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

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

. . . .

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

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

[TNPCA 6.01]

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

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

votes which members present at such meeting in person or by proxy are entitled to cast, unless

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

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

[TNPCA 7.01]

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

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

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

[TNPCA]

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

corporation shall cease to exist.

[TNPCA 7.12]

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

[TPAA 8]

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

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

. . .

[TREITA 3.10]

(A) . . .

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

. . .

[TREITA]

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

[TRLPA]

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

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

(2) written consent of all partners to dissolution;

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

(A) there remains at least one general partner and the partnership

agreement permits the business of the limited partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or

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

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

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

[TRPA 8.01]

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

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

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

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

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

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

(2) the occurrence of the

specified event, unless otherwise continued under Section 4.07.

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

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

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

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

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

Revisor's Note

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

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

Revised Law

Sec. 11.052. WINDING UP PROCEDURES. (a) Except as provided by the title of this code governing the domestic entity, on the occurrence of an event requiring winding up of a domestic entity,

unless the event requiring winding up is revoked under Section 11.151 or canceled under Section 11.152, the owners, members, managerial officials, or other persons specified in the title of this code governing the domestic entity shall, as soon as reasonably practicable, wind up the business and affairs of the domestic entity. The domestic entity shall:

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

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

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

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

(b) During the winding up process, the domestic entity may prosecute or defend a civil, criminal, or administrative action. (TBCA 6.04 (part); TLLCA 6.03 (part), 6.05 (part); TREITA 19.10 (part); TRLPA 8.04(a) (part), (b) (part); TRPA 8.03(a), (b) (part).)

Source Law

[TBCA]

6.04.A. Before filing articles of dissolution:

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

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

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

[TLLCA]

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

designated by the articles of organization, by the regulations, or by resolution of the managers or members. . . .

[TLLCA]

6.05.A. Before filing articles of dissolution:

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

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

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

[TREITA]

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

[TRLPA 8.04]

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

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

. . .

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

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

. . .

[TRPA 8.03]

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

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

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

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

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

. . .

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

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

. . .

(6) perform any other necessary act.

Revisor's Note

Section 11.052 sets forth the actions to be taken by a domestic entity upon the occurrence of an event requiring the winding up of the entity. One of the required actions is the provision of written notice to

each known claimant against the domestic entity. Existing provisions in the Texas Revised Limited Partnership Act and Texas Revised Partnership Act do not require written notification be sent to each known claimant. Existing provisions in the Texas Business Corporation Act and Texas Limited Liability Company Act require a corporation and limited liability company to mail such notification by registered or certified mail. Section 11.052 does not restrict how such notification must be made and would permit notification by electronic or other technological means.

Revised Law

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

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

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

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

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

(d) A domestic entity may continue its business wholly or partly, including delaying the disposition of property of the domestic entity, for the limited period necessary to avoid unreasonable loss of the entity's property or business. (TBCA 6.04 (part); TLLCA 6.04 (part), 6.05 (part); TNPCA 6.02.A(1); TREITA 19.10 (part); TRLPA 8.04(b) (part), 8.05; TRPA 8.03(b) (part), (c), 8.06(a).)

Source Law

[TBCA]

6.04.A. Before filing articles of dissolution:

. . .

(3) The corporation shall proceed to . . . pay, satisfy, or discharge all its debts, liabilities, and obligations, or make adequate provision for payment, satisfaction, or discharge thereof, . . . except that if the properties and assets of the corporation are not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, the corporation shall apply its properties and assets so far as they will go to the just and equitable payment, satisfaction, or discharge of its debts, liabilities, and obligations or shall make adequate provision for such application. After paying, satisfying, or discharging all its debts, liabilities, and obligations, or making adequate provision for payment, satisfaction, or discharge thereof, the corporation shall then distribute the remainder of its properties and assets, either in cash or in kind, to its shareholders according to their respective rights and interests.

[TLLCA]

6.04. . . .

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

. . .

[TLLCA]

6.05. . . .

(3) The limited liability company shall proceed to . . . pay, satisfy or discharge its liabilities and obligations, or make adequate provisions for payment and discharge thereof, and . . . in case its property and assets are not sufficient to

satisfy or discharge all the limited liability company's liabilities and obligations, the limited liability company shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations. After paying or discharging all of its obligations, or making adequate provisions for payment and discharge thereof, the limited liability company shall then distribute the remainder of its assets, either in cash or in kind, among its members according to their respective rights and interest.

. . .

[TNPCA 6.02.A]

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

[TREITA]

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

[TRLPA 8.04]

(b) . . .

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

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

[TRLPA]

8.05. On the winding up of a limited

partnership, its assets shall be paid or transferred as follows:

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

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

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

[TRPA 8.03]

(b) . . .

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

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

. . .

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

[TRPA 8.06]

(a) Application of Property to Obligations. In winding up the partnership business, the property of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by other

applicable law, partners who are creditors other than in their capacities as partners. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b).

Revisor's Note

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

Revised Law

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

- (1) supervise the winding up of the domestic entity;
- (2) appoint a person to carry out the winding up of the domestic entity; and
- (3) make any other order, direction, or inquiry that the circumstances may require. (TBCA 6.04 (part); TLLCA 6.05 (part); TNPCA 6.02.A(3) (part); TRLPA 8.04(a) (part); TRPA 8.01(e), 8.03(a) (part).)

Source Law

[TBCA]

6.04.A. Before filing articles of dissolution:

. . .

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

[TLLCA]

6.05. . . .

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

[TNPCA 6.02.A]

(3) . . . A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3) or described in Section 170(c)(1) or (2), or their successor statutes, the remaining assets of the corporation not distributed under the plan of distribution. Any distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

[TRLPA 8.04]

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

[TRPA 8.01]

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

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

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

carry on the business in partnership with that partner; or

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

[TRPA 8.03]

(a) . . .

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

Revisor's Note

The revised law permits an owner or member of a corporation or limited liability company to apply to a district court to supervise the winding up of the corporation or limited liability company. The Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Limited Liability Company Act do not explicitly authorize such application by an owner or a member. A similar result can be achieved, however, through an action by an owner or member for appointment of a receiver under the provisions of Texas Business Corporation Act and Texas Non-Profit Corporation Act Articles 7.05 and 7.06 and Texas Limited Liability Company Act Article 8.12.

The revised law omits the provisions in the Texas Revised Limited Partnership Act and Texas Revised Partnership Act that permit a partner's legal representative or assignee/transferee to apply for court action. This right, however, is granted by Sections 152.702(b) and 153.502(b). In addition, the revised law explicitly allows the partnership to apply for court supervision, which is not clear in the source law but could be implied from the explicit power given to the partners to make such application.

Revised Law

Sec. 11.055. COURT ACTION OR PROCEEDING DURING WINDING UP. During the winding up process, a domestic entity may continue prosecuting or defending a court action or proceeding by or against the domestic entity. (TBCA 7.12.A (part); TLLCA 6.08.B (part); TNPCA 7.12.A (part); TRLPA 8.04(b) (part).)

Source Law

[TBCA 7.12]

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

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

. . . .

[TLLCA 6.08]

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

[TNPCA 7.12]

A. . . .

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

. . . .

[TRLPA 8.04]

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

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

. . . .

Revisor's Note

No substantive change is intended. The revised law is modeled more closely on the Texas Revised Partnership Act and Texas Revised Limited Partnership Act provisions. While the source law provisions in the Texas Business Corporation Act, Texas Limited Liability Company Act, and Texas Non-Profit Corporation Act only explicitly apply after the entity's existence is terminated, presumably the entity has the same power during the winding up process as it has post-termination.

Revised Law

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

(1) to continue the company; and

(2) to become a member of the company effective as of the date of the termination or to designate another person who agrees to become a member of the company effective as of the date of the termination. (Del. Limited Liability Company Act 18-801(a) (part); TLLCA 6.01.A (part).)

Source Law

[Del. Limited Liability Company Act]

18-801. (a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

. . .

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

a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited

liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

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

. . .

[TLLCA 6.01]

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

. . .

(5) except as otherwise provided in the regulations, upon the death, expulsion, withdrawal pursuant to or as provided in the articles of organization or regulations, bankruptcy, or dissolution of a member or the occurrence of any other event

which terminates the continued membership of a member in the limited liability company; or

. . .

Revisor's Note

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

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

Revised Law

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

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

(2) in a general partnership for a definite term or

for a particular undertaking, on:

- (A) the express will of all of the partners; or
- (B) the expiration of the term or the completion of the undertaking, unless otherwise continued under Section 152.709;

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

- (A) the express will of all of the partners; or
- (B) the occurrence of the specified event, unless otherwise continued under Section 152.709;

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

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

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

(b) An event described by Subsection (a)(6) requires the winding up of a general partnership 60 days after the date on which the general partnership receives notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the general partnership. (TRPA 8.01(a), (b), (c), (d), (f), (g) (part).)

Source Law

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

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

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

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

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

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

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

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

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

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

Revisor's Note

No substantive change is intended.

Revised Law

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

- (1) written consent of all partners to the winding up and termination of the limited partnership; and
 - (2) an event of withdrawal of a general partner.
- (TRLPA 8.01 (part).)

Source Law

8.01. . . .

- (2) written consent of all partners to dissolution;
- (3) an event of withdrawal of a general partner,

Revisor's Note

No substantive change is intended.

Revised Law

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

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

Revisor's Note

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

[Sections 11.060-11.100 reserved for expansion]

SUBCHAPTER C. TERMINATION OF DOMESTIC ENTITY

Revised Law

Sec. 11.101. CERTIFICATE OF TERMINATION FOR FILING ENTITY.

(a) On completion of the winding up process under Subchapter B, a filing entity must file a certificate of termination in accordance with Chapter 4.

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

(c) The certificate of termination must contain:

- (1) the name of the filing entity;
 - (2) the name and address of each of the filing entity's governing persons;
 - (3) the entity's file number assigned by the secretary of state, unless the entity is a real estate investment trust;
 - (4) the nature of the event requiring winding up;
 - (5) a statement that the filing entity has complied with the provisions of this code governing its winding up; and
 - (6) any other information required by this code to be included in the certificate of termination for the filing entity.
- (TBCA 6.06 (part), 6.07 (part); TLLCA 6.07 (part), 6.08.A (part); TNPCA 6.05 (part); TPAA 18 (part); TREITA 19.20(A), (B); TRLPA 2.03(a) (part), (b).)

Source Law

[TBCA]

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

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) That all debts, liabilities, and obligations of the corporation have been paid, satisfied, or discharged or that adequate provision has been made for payment, satisfaction, or discharge thereof or, if the

properties and assets of the corporation were not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, that all properties and assets of the corporation have been applied so far as they would go to the just and equitable payment of those debts, liabilities, and obligations or that adequate provision has been made for such application.

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

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

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

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

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

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

respectively.

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

[TLLCA]

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

(1) The name of the limited liability company.

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

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

(4) That all remaining property and assets of the limited liability company have been distributed among its members in accordance with their respective rights and interest or that no property remained for distribution to members after applying it as far as it would go to the just and equitable payment of the debts, liabilities, and

obligations of the limited liability company, or that the limited liability company has not acquired any property or assets and therefore distributions to members were not required.

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

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

[TLLCA 6.08]

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

[TNPCA]

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

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes which members

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

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

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

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a statement that a plan of distribution has been adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

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

[TPAA]

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

(1) The name and address of the association;

(2) The names and respective addresses of its officers;

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee; and

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

[TREITA 19.20]

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

(1) the name of the real estate investment trust;

(2) the names and respective addresses of its officers;

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

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

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

real estate investment trust;

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

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

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

[TRLPA 2.03]

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

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

. . .

(b) A certificate of cancellation must contain:

(1) the name of the limited partnership;

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

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

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

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

Revisor's Note

Section 11.101 requires a domestic filing entity to file a certificate of

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

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

Revised Law

Sec. 11.102. EFFECTIVENESS OF TERMINATION OF FILING ENTITY. Except as otherwise provided by this chapter, the existence of a filing entity terminates on the filing of a certificate of termination with the filing officer. (TBCA 6.01.A(3) (part), 6.07.B (part); TLLCA 6.08.B (part); TNPCA 6.06.B; TREITA 19.20(C); TRLPA 2.03(a) (part).)

Source Law

[TBCA 6.01.A]

(3) . . . Upon the issuance of

such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

[TBCA 6.07]

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

[TLLCA 6.08]

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

[TNPCA 6.06]

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

[TREITA 19.20]

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

[TRLPA 2.03]

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

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

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 11.103. EFFECTIVENESS OF TERMINATION OF NONFILING ENTITY. Except as otherwise provided by this chapter, the existence of a nonfiling entity terminates on the completion of the winding up of its business and affairs. Notice of the termination must be provided by the nonfiling entity in the manner provided in the governing documents of the nonfiling entity if notice of termination is required under the governing documents. (TRPA 8.02.)

Source Law

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

Revisor's Note

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

Revised Law

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

- (1) the entity has failed to file a certificate of termination in accordance with Section 11.101; and
- (2) the entity has failed to file an amendment to extend its existence in accordance with Section 11.152. (New.)

Revisor's Note

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

Revised Law

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

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

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

(b) In addition to the statements required by Subsection (a), if the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, the certificate of termination must include a statement that distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with this code for the distribution of that property. (TNPCA 6.05 (part).)

Source Law

6.05. . . .

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a statement that a plan of distribution has been adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for

the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Revisor's Note

No substantive change is intended.

[Sections 11.106-11.150 reserved for expansion]

SUBCHAPTER D. REVOCATION AND CONTINUATION

Revised Law

Sec. 11.151. REVOCATION OF VOLUNTARY WINDING UP. (a)

Before the termination of the existence of a domestic entity takes effect, the domestic entity may revoke a voluntary decision to wind up the entity by approval of the revocation in the manner specified in the title of this code governing the entity.

(b) A domestic entity may continue its business following the revocation of a voluntary decision to wind up under Subsection (a). (TBCA 6.05.A (part), D (part); TLLCA 6.06; TNPCA 6.04.A (part), B; TRPA 8.01(g) (part); TRLPA 8.01 (part).)

Source Law

[TBCA 6.05]

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

(1) By the written consent of all of its shareholders.

(2) By the act of the corporation in the following manner:

. . .

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

[TLLCA]

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

B. Upon the revocation of voluntary

dissolution proceedings the limited liability company may again carry on its business.

[TNPCA 6.04]

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

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

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

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

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

[TRPA 8.01]

(g) Notice from Partner if No Term or Undertaking; Option to Continue. If a partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up, a request for winding up the partnership from a partner, other than a partner who has agreed not to

withdraw, requires a winding up 60 days after the date of the partnership's receipt of notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the partnership. . . .

[TRLPA 8.01]

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

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

. . . .

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

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

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

. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 11.152. CONTINUATION OF BUSINESS WITHOUT WINDING UP.

(a) Subject to Subsections (c) and (d), a domestic entity to which an event requiring the winding up of the entity occurs as

specified by Section 11.051(3) or (4) may cancel the event requiring winding up in the manner specified in the title of this code governing the domestic entity not later than the first anniversary of the date of the event requiring winding up or an earlier period prescribed by the title of this code governing the domestic entity.

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

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

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

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

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

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

(TBCA 7.12.E; TNPCA 7.12.G; TLLCA 6.01.B, 8.12.A; TRPA 4.07(a); TRLPA 8.01 (part).)

Source Law

[TBCA 7.12]

E. A dissolved corporation that was dissolved by the expiration of the period of its duration may, during the three-year period following the date of dissolution, amend its articles of incorporation by following the procedure prescribed in this Act to extend or perpetuate its period of existence. That expiration shall not of itself create any vested right on the part of

any shareholder or creditor to prevent such an action. No act or contract of such a dissolved corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

[TNPCA 7.12]

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

[TLLCA 6.01]

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 8.12]

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

[TRPA 4.07]

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

[TRLPA]

8.01. . . .

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

continue the business of the limited partnership;

. . .

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

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

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

. . .

Revisor's Note

Subsections (a), (c), and (d) of the revised law relate to events requiring winding up under Sections 11.051(3) and (4) and are derived generally from the Texas Revised Partnership Act, Texas Revised Limited Partnership Act, and Texas Limited Liability Company Act and extended to apply to corporations and those other entities that incorporate the Texas Business Corporation Act and Texas Non-Profit Corporation Act by reference. However, the events requiring winding up under Sections 11.051(3) and (4) rarely occur, and may not be authorized, in existing corporations because there are no provisions in the source law that automatically require winding up of a corporation and the governing documents of corporations rarely have such provisions. These provisions in the Texas Revised Partnership Act, Texas Revised Limited Partnership Act, and Texas Limited Liability Company Act were driven by former federal income tax regulations which required

dissolution upon certain events to preserve "flow-through" tax treatment as a partnership. With the adoption of the "check-the-box" regulations by the IRS, this requirement no longer exists for partnership tax treatment.

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

[Sections 11.153-11.200 reserved for expansion]

SUBCHAPTER E. REINSTATEMENT OF TERMINATED ENTITY

Revised Law

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

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

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

- (1) an order of a court or the secretary of state;
- (2) an event requiring winding up that is specified in the title of this code governing the terminated entity, if that title prohibits reinstatement; or
- (3) forfeiture under the Tax Code. (TBCA 6.05.A (part).)

Source Law

[TBCA 6.05]

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

Revisor's Note

Subchapter E permits a terminated entity to reinstate its status if one of the conditions in Section 11.201(a) exists, if such action is approved by its owners, members, or governing persons, and if a certificate of reinstatement is filed under Section 11.202 with the filing officer before the third anniversary of the entity's termination. (The three-year period is similar to the period set forth in the Texas Business Corporation Act and Texas Limited Liability Company Act provisions relating to an entity's survival for certain limited purposes after dissolution.) Article 6.05, Texas Business Corporation Act, permits a for-profit corporation to revoke a voluntary dissolution by action of its shareholders within 120 days of the filing of the certificate of dissolution. Subsection (a) of the revised law imposes conditions to reinstatement in an effort to provide a standardized provision that is fair for all filing entities. The conditions are intended to prevent unfair or unintentional consequences. Although the revised law is new for most entities, the reinstatement rights provided in the revised law parallel the entity survival provisions of Sections 11.356 and 11.357 and have several similar conditions for applicability. Sections 11.356 and 11.357 are derived from the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Limited Liability Company Act. Thus, the revised law provides symmetry and consistency in application of provisions.

Revised Law

Sec. 11.202. PROCEDURES FOR REINSTATEMENT. (a) To the

extent applicable, a terminated entity, to be reinstated, must complete the requirements of this section not later than the third anniversary of the date the termination of the terminated entity's existence took effect.

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

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

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

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

(e) A letter of eligibility from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated must be filed with the certificate of reinstatement if the filing entity is a professional corporation, for-profit corporation, or limited liability company. (TBCA 6.05.B.)

Source Law

[TBCA 6.05]

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

- (1) the name of the corporation;
- (2) the date that the revocation of dissolution was authorized and, if the dissolution has become effective, the effective date of the dissolution that was

revoked; and

(3) if the corporation elected to revoke voluntary dissolution proceedings by the written consent of all of its shareholders, a copy of the consent, together with a statement that the consent was signed by all shareholders of the corporation or was signed in their names by their attorneys thereunto duly authorized; or

(4) if the corporation elected to revoke voluntary dissolution proceedings by act of the corporation:

(a) a statement that a resolution revoking the voluntary dissolution was adopted by the shareholders of the corporation and of the date of the adoption thereof;

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

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

Revisor's Note

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

Revised Law

Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. If the secretary of state determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 is the same as, deceptively similar to, or similar to a name of a filing entity or foreign entity on file as

provided by or reserved or registered under this code, the secretary of state may not accept for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains consent for the use of the similar name. (TBCA 6.05.C.)

Source Law

[TBCA 6.05]

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

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

(2) File the original in his office;

(3) Issue a certificate of revocation of dissolution to which he shall affix the copy; and

(4) Deliver to the corporation or its representative the certificate of revocation of dissolution, together with the affixed copy.

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

Revisor's Note

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

Revised Law

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

Revisor's Note

The revised law permits the existence of a nonfiling entity to be reinstated. The source law does not have any similar

provisions. Section 11.204 establishes when a reinstatement of a nonfiling entity is effective.

Revised Law

Sec. 11.205. EFFECTIVENESS OF REINSTATEMENT OF FILING ENTITY. The reinstatement of a terminated filing entity that previously filed a certificate of termination takes effect on the filing of the entity's certificate of reinstatement. (TBCA 6.05.D (part).)

Source Law

[TBCA 6.05]

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

Revisor's Note

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

Revised Law

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

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

(2) the terminated entity may carry on its business as if the termination of its existence had not occurred. (TBCA 6.05.D (part).)

Source Law

[TBCA 6.05]

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

Revisor's Note

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

[Sections 11.207-11.250 reserved for expansion]

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

Revised Law

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

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

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

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

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

(c) This subchapter shall not apply to real estate investment trusts. (TBCA 7.01.B, C(1); TLLCA 8.12.A; TNPCA 7.01.B, C(1); TRLPA 13.06(a), (b), 13.08(a).)

Source Law

[TBCA 7.01]

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

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

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

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

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

[TLLCA 8.12]

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

[TNPCA 7.01]

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

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

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

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

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

[TRLPA 13.06]

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

(b) A forfeiture under this section takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation that the right to transact business has been forfeited together with the date of forfeiture. Notice of the forfeiture shall be mailed to the limited partnership at:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership; or

(3) any other place of business of the limited partnership.

[TRLPA 13.08]

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

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

Revisor's Note

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

Section 11.251 eliminates the failure of an entity to pay franchise tax or a tax deposit as grounds for termination. Although such failure is a basis for termination in existing provisions of the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Limited Liability Company Act, the practice of the secretary of state is to use the provisions of Chapter 171, Tax Code, to effect a forfeiture of an entity's articles or certificate.

The source law requires the secretary of state to provide the entity with a 90-day notice and cure period before taking action to involuntarily dissolve the entity for its failure to file a report or to maintain a registered agent. Section 11.251 would require a 90-day notice and cure period

before termination under all circumstances specified in that section.

The source law in the Texas Non-Profit Corporation Act and Texas Business Corporation Act requires advance notice of dissolution to be sent by certified mail to the entity's registered office, or to its principal place of business in Texas, or the last known address of one of its officers, directors, or managers, or to any other known place of business of the entity. The source law in the Texas Revised Partnership Act and Texas Revised Limited Partnership Act does not specifically require an advance notice. Section 11.251 requires the secretary of state to provide notice by regular or certified mail to the entity's registered office address or principal place of business. Present practice of the secretary is to mail notification to the addresses indicated in Section 11.251 and not to any other address.

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

Revised Law

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

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

(b) The certificate of termination must state:

- (1) that the filing entity has been involuntarily terminated; and
- (2) the date and cause of the termination.

(c) Except as otherwise provided by this chapter, the existence of the filing entity is terminated on the issuance of the certificate of termination by the secretary of state. (TBCA 7.01.C(2), D; TLLCA 8.12.A; TNPCA 7.01.C(2), D; TRLPA 13.06(b) (part), 13.08(a) (part).)

Source Law

[TBCA 7.01]

[C]

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

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

[TLLCA 8.12]

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

[TNPCA 7.01]

[C]

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

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

[TRLPA 13.06]

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

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership; or

(3) any other place of business of the limited partnership.

[TRLPA 13.08]

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

Revisor's Note

See the revisor's note to Section 11.251. The revised law standardizes the actions necessary to effect the termination

by the Secretary of State. The provisions in the Texas Revised Limited Partnership Act are not as detailed as in the Texas Non-Profit Corporation Act or Texas Business Corporation Act, upon which the revised law is based. The Texas Revised Limited Partnership Act does not require the Secretary of State to issue a formal certificate of termination, as required by the revised law. Instead, the Texas Revised Limited Partnership Act merely requires the Secretary of State to note the termination on the Secretary's records.

Revised Law

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

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

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

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

(1) the name of the filing entity;

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

(3) the effective date of the involuntary termination;

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

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

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

(d) If a filing entity is reinstated before the third anniversary of the date of its involuntary termination, the entity is considered to have continued in existence without interruption from the date of termination. The reinstatement shall have no effect on any issue of personal liability of the governing persons, officers, or agents of the filing entity during the period between termination and reinstatement. (TBCA 7.01.E (part); TLLCA 8.12.A; TNPCA 7.01.E (part); TRLPA 13.09(a),

(b) (part).)

Source Law

[TBCA 7.01]

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

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

[TLLCA 8.12]

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

[TNPCA 7.01]

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within

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

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

[TRLPA]

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

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

Revisor's Note

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

Existing provisions in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, and Texas Limited Liability Company Act state that the reinstatement has no effect on the personal liability of a governing person, officer, or agent during the period between dissolution and reinstatement.

Revised Law

Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING TAX FORFEITURE. A filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its certificate of formation. (TBCA 7.12.F(1) (part); TLLCA 8.12.A.)

Source Law

[TBCA 7.12.F]

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

[TLLCA 8.12]

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

Revisor's Note

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

[Sections 11.255-11.300 reserved for expansion]

SUBCHAPTER G. JUDICIAL WINDING UP AND TERMINATION

Revised Law

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

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

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

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

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

(5) public interest requires winding up and

termination of the filing entity because:

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

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

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

(b) Sections 11.302-11.307 do not apply to Subsection (a)(5). (TBCA 7.01.A, F, G; TLLCA 8.12.A; TNPCA 7.01.A, F, G.)

Source Law

[TBCA 7.01]

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

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

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

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

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

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

may dissolve the corporation involuntarily if it is established that:

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

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

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

[TLLCA 8.12]

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

[TNPCA 7.01]

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

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

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

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

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

F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony in the conduct of the

affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

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

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

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

Revisor's Note

Sections 11.301-11.311 and 11.315, which relate to the judicial winding up and termination of a filing entity, correspond, in general, to existing provisions found in the Texas Business Corporation Act and Texas Non-Profit Corporation Act. The revised law makes these provisions applicable to limited partnerships.

Revised Law

Sec. 11.302. NOTIFICATION OF CAUSE BY SECRETARY OF STATE.

(a) The secretary of state shall provide to the attorney general:

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

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

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

(c) A court shall accept a certificate issued by the secretary of state as to the facts relating to the cause for the winding up and termination and the sending of a notice under Subsection (b) as prima facie evidence of the facts stated in the certificate and the sending of the notice. (TBCA 7.02.A, B;

Source Law

[TBCA 7.02]

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

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

[TNPCA 7.02]

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

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation

of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

Revisor's Note

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

Revised Law

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

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

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

(TBCA 7.02.C; TNPCA 7.02.C.)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General may then file an action in

the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

Revisor's Note

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

Revised Law

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

- (1) cures the problems for which winding up and termination is sought; and
- (2) pays the costs of the action. (TBCA 7.02.D; TNPCA 7.02.D.)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

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

Revisor's Note

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

Revised Law

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

- (1) make findings to that effect; and
- (2) subject to Section 11.306, enter a judgment not

earlier than the fifth day after the date the court makes its findings. (TBCA 7.02.E (part); TNPCA 7.02.E (part).)

Source Law

[TBCA 7.02]

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

[TNPCA 7.02]

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

Revisor's Note

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

Revised Law

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

made not later than the fifth day after the date the court makes its findings under Section 11.305.

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

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

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

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

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

(e) If a court finds that a filing entity has not cured the problems for which winding up and termination is sought within the period prescribed by Subsection (c), the court shall enter final judgment requiring a winding up of the filing entity's business. (TBCA 7.02.E (part); TLLCA 8.12.A; TNPCA 7.02.E (part).)

Source Law

[TBCA 7.02]

E. . . . If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such

application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

[TLLCA 8.12]

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

[TNPCA 7.02]

E. . . . If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the

corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

Revisor's Note

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

Revised Law

Sec. 11.307. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a trial court's findings against a filing entity under this subchapter shall remand the case to the trial court with instructions to grant the filing entity an opportunity to cure the problems for which the entity has been found guilty if:

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

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

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

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

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

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

(d) If a filing entity has not cured the problems for which

winding up and termination is sought within the period prescribed by the appellate court under Subsection (b), the judgment requiring winding up and termination shall become final. (TBCA 7.02.F; TLLCA 8.12.A; TNPCA 7.02.F.)

Source Law

[TBCA 7.02]

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

[TLLCA 8.12]

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

[TNPCA 7.02]

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or

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

Revisor's Note

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

Revised Law

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

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

(2) a district court of Travis County.

(b) A district court described by Subsection (a) has jurisdiction of the action for involuntary winding up and termination. (TBCA 7.03 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

Source Law

[TBCA]

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

court of Travis County. . . .

[TLLCA 8.12]

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

[TNPCA]

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

Revisor's Note

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

Revised Law

Sec. 11.309. PROCESS IN STATE ACTION. Citation in an action for the involuntary winding up and termination of a filing entity under this subchapter shall be issued and served as provided by law. (TBCA 7.03 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

Source Law

[TBCA]

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

[TLLCA 8.12]

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

[TNPCA]

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

Revisor's Note

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

Revised Law

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

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

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

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

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

(e) Unless a filing entity has been served with citation, a default judgment may not be taken against the entity before the 31st day after the date the notice is first published. (TBCA 7.03 (part); TLLCA 8.12.A; TNPCA 7.03 (part).)

Source Law

[TBCA]

7.03.A. . . . If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending

in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two successive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

[TLLCA 8.12]

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

[TNPCA]

7.03.A. . . . If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two consecutive weeks, and the first publication

thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

Revisor's Note

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

Revised Law

Sec. 11.311. ACTION ALLOWED AFTER EXPIRATION OF FILING ENTITY'S DURATION. The expiration of a filing entity's period of duration does not, by itself, create a vested right on the part of an owner or creditor of the filing entity to prevent an action by the attorney general for the involuntary winding up of the filing entity's business and termination of the filing entity's existence. (TBCA 7.12.E (part); TLLCA 8.12.A; TNPCA 7.12.G (part).)

Source Law

[TBCA 7.12]

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

[TLLCA 8.12]

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

[TNPCA 7.12]

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

Revisor's Note

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

Revised Law

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

the filing entity shall comply with:

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

Revisor's Note

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

Revised Law

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

- (1) when the court considers it necessary or advisable; or
- (2) on completion of the winding up process. (TBCA 7.09.)

Source Law

[TBCA 7.09]

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

Revisor's Note

The revised law is similar to the mandatory termination provisions found in Texas Business Corporation Act Article 7.09 for liquidation of the assets and business of a corporation through a receiver. The revised law recognizes explicitly the power

of a court to terminate the existence of a filing entity under Section 11.301 when necessary or advisable or on completion of the winding up process, which is implicit in the source law.

Revised Law

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

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

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

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

(2) an owner of the partnership or limited liability company if the court determines that it is not reasonably practicable to carry on the entity's business in conformity with its governing documents. (TLLCA 6.02; TRLPA 8.02; TRPA 8.01(e).)

Source Law

[TLLCA]

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

[TRLPA]

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

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

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

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

[TRPA 8.01]

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

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

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

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

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 11.315. FILING OF DECREE OF TERMINATION AGAINST FILING ENTITY. (a) The clerk of a court that enters a decree terminating the existence of a filing entity shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section. (TBCA 7.10; TLLCA 8.12.A; TNPCA 7.10.)

Source Law

[TBCA]

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

[TLLCA 8.12]

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

and officers.

[TNPCA]

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

Revisor's Note

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

[Sections 11.316-11.350 reserved for expansion]

SUBCHAPTER H. CLAIMS RESOLUTION ON TERMINATION

Revised Law

Sec. 11.351. LIABILITY OF TERMINATED FILING ENTITY. A terminated filing entity is liable only for an existing claim. (TBCA 7.12.C (part); TLLCA 8.12.A; TNPCA 7.12.C (part).)

Source Law

[TBCA 7.12]

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

[TLLCA 8.12]

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

[TNPCA 7.12]

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

Revisor's Note

The provisions of Subchapter H, which relate to the resolution of claims on termination, correspond, in general, to provisions found in the Texas Business Corporation Act and Texas Non-Profit Corporation Act. The revised law makes those provisions applicable to limited partnerships.

Revised Law

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

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

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

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

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

(c) The comptroller shall issue a receipt for money received under this section. (TBCA 7.11.A (part); TLLCA 8.12.A; TNPCA 7.11.A (part).)

Source Law

[TBCA 7.11]

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

[TLLCA 8.12]

A. Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and

Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

[TNPCA 7.11]

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

Revisor's Note

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

Revised Law

Sec. 11.353. DISCHARGE OF LIABILITY OF PERSON RESPONSIBLE FOR LIQUIDATION. A person responsible for the distribution in liquidation of a filing entity's assets will be released and discharged from further liability with respect to money received from the liquidation when the person deposits the money with the comptroller under Section 11.352. (TBCA 7.11.A (part); TLLCA 8.12.A; TNPCA 7.11.A (part).)

Source Law

[TBCA 7.11]

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

[TLLCA 8.12]

A. Subject to Section C of this

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

[TNPCA 7.11]

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

Revisor's Note

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

Revised Law

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

(b) The comptroller shall issue a warrant drawn on the account created under Section 11.352 in favor of a person who meets the requirements for making a claim under Subsection (a) and in the amount to which the person is entitled. (TBCA 7.11.B (part); TLLCA 8.12.A; TNPCA 7.11.B (part).)

Source Law

[TBCA 7.11]

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

[TLLCA 8.12]

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

[TNPCA 7.11]

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

Revisor's Note

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

Revised Law

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

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

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

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

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

(c) If no claimant makes satisfactory proof to the comptroller of a right to the money before the 61st day after the date notice under this section is published, the money automatically escheats to and becomes the property of the state and shall be deposited in the general revenue fund. (TBCA 7.11.B (part); TLLCA 8.12.A; TNPCA 7.11.B (part).)

Source Law

[TBCA 7.11]

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

fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

[TLLCA 8.12]

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

[TNPCA 7.11]

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

Revisor's Note

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

Revised Law

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

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

terminated entity;

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

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

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

(5) settling affairs not completed before termination.

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

(c) If an action on an existing claim by or against a terminated filing entity has been brought before the expiration of the three-year period after the date of the entity's termination and the claim was not extinguished under Section 11.359, the terminated filing entity continues to survive for purposes of:

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

(2) the application or distribution of any property of the terminated filing entity as provided by Section 11.053 until the property has been applied or distributed. (TBCA 7.12.A, C (part); TLLCA 8.12.A; TNPCA 7.12.A, C (part).)

Source Law

[TBCA 7.12]

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

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

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

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

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

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

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

[TLLCA 8.12]

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

[TNPCA 7.12]

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

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

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

(3) holding title to and

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

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

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

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

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

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

Revisor's Note

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

Revised Law

Sec. 11.357. GOVERNING PERSONS OF ENTITY DURING LIMITED SURVIVAL. (a) Subject to the provisions of the title governing the terminated filing entity, during the three-year period that a

terminated filing entity's existence is continued under Section 11.356, the governing persons of the terminated filing entity serving at the time of termination shall continue to manage the affairs of the terminated filing entity for the limited purposes specified by Section 11.356 and have the powers necessary to accomplish those purposes. The number of governing persons:

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

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

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

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

(2) is liable to the terminated filing entity for the person's actions taken after the entity's termination to the same extent that the person would have been liable had the person taken those actions before the termination. (TBCA 7.12.B; TLLCA 8.12.A; TNPCA 7.12.B.)

Source Law

[TBCA 7.12]

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

[TLLCA 8.12]

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

and officers.

[TNPCA 7.12]

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

Revisor's Note

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

Revised Law

Sec. 11.358. ACCELERATED PROCEDURE FOR EXISTING CLAIM RESOLUTION. (a) A terminated filing entity may shorten the period for resolving a person's existing claim against the entity by giving notice by registered or certified mail, return receipt requested, to the claimant at the claimant's last known address that the claim must be resolved under this section.

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

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

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

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

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

(c) To assert a claim, a person who is notified by a terminated filing entity that the person's claim must be resolved under this section must present the claim in writing to the terminated filing entity at the address given by the entity in the notice.

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

(1) contain the:

(A) identity of the claimant; and

(B) nature and amount of the claim; and

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

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

(f) Notice under Subsection (e) must:

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

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

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

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

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

(4) state the date on which notice of the claim's rejection was mailed and the effective date of the entity's termination. (TBCA 7.12.D (part); TLLCA 8.12.A; TNPCA 7.12.D, E.)

Source Law

[TBCA 7.12]

D. A dissolved corporation may give written notice to a person having or asserting an existing claim against the

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

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

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

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

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

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

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

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

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

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

. . .

[TLLCA 8.12]

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

[TNPCA 7.12]

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

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

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

(3) state a mailing address where the written presentation of the person's claim against the dissolved corporation is to be sent and state that if the written presentation of the claim is not received at

that address on or before the date stated in the notice, the claim will be extinguished; and

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

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

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

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

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

Revisor's Note

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

Revised Law

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

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

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

(2) fails to bring an action on a claim rejected under

Section 11.358(e) before:

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

(B) the third anniversary of the effective date of the entity's termination. (TBCA 7.12.C (part), D (part); TLLCA 8.12.A; TNPCA 7.12.C (part), F.)

Source Law

[TBCA 7.12]

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

D. . . .

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

[TLLCA 8.12]

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

[TNPCA 7.12]

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

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

(1) a written presentation of that

claim meeting the requirements of this article is not received at the address of the dissolved corporation stated in the notice to the person on or before the date stated in the notice; or

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

Revisor's Note

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