

Revised Law

Sec. 101.253. DESIGNATION OF COMMITTEES; DELEGATION OF AUTHORITY. (a) The governing authority of a limited liability company by resolution may designate:

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

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

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

(c) The designation of a committee under this section does not relieve the governing authority of any responsibility imposed by law. (TLLCA 2.12 (part), 2.18.A, C.)

Source Law

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

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

not have the authority to authorize or make a distribution of limited liability company cash or property to the members or to authorize the issuance of interests in the limited liability company.

. . . .

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

Revisor's Note

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

Revised Law

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

(b) An act committed by an agent of a limited liability company described by Subsection (a) for the purpose of apparently carrying out the ordinary course of business of the company,

including the execution of an instrument, document, mortgage, or conveyance in the name of the company, binds the company unless:

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

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

(c) An act committed by an agent of a limited liability company described by Subsection (a) that is not apparently for carrying out the ordinary course of business of the company binds the company only if the act is authorized in accordance with this title. (TLLCA 2.11, 2.21.C, D.)

Source Law

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

. . .

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

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

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

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

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

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

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

Revisor's Note

No substantive change is intended. The revised law combines provisions of the Texas Limited Liability Company Act relating to limited liability company property and authority of agents into one section. The provisions of Article 2.11, Texas Limited Liability Company Act, stating that a limited liability company may own or purchase property in its own name and that instruments and documents providing for the acquisition, mortgage, or disposition of the limited liability company's property are binding upon the company if executed by an agent of the company are simplified in the code, which states that an act committed by an agent of a limited liability company, "including the execution of an instrument, document, mortgage, or conveyance in the name of the company," is binding upon the company. Section 101.254(c) was previously implied by the Texas Limited Liability Company Act and is now made explicit by the code, which clarifies that acts by agents not apparently for carrying out the ordinary course of business may bind the company if authorized in accordance with this title.

Revised Law

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

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

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

(A) is a managerial official; or

(B) has a financial interest.

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

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

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

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

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

(c) Common or interested governing persons of a limited liability company may be included in determining the presence of a quorum at a meeting of the company's governing authority or of a committee of the governing authority that authorizes the contract or transaction. (TLLCA 2.12.A (part), 2.17.)

Source Law

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

2.17.A. Unless otherwise provided in the articles of organization or the regulations, an otherwise valid contract or transaction between a limited liability company and one or more of its managers or officers, or between a limited liability company and any other domestic or foreign limited liability company or other entity in which one or more of its managers or officers

are managers, directors or officers or have a financial interest, shall be valid notwithstanding the manager or officer is present at or participates in the meeting of managers or of a committee of managers which authorizes the contract or transaction, or solely because such manager's or managers' votes are counted for such purpose, if any of the following is satisfied:

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

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

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

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

Revisor's Note

No substantive change is intended.

[Sections 101.256-101.300 reserved for expansion]

SUBCHAPTER G. MANAGERS

Revised Law

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

Revisor's Note

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

Revised Law

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

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

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

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

- (1) resident of this state; or
- (2) member of the company. (TLLCA 2.12 (part), 2.13 (part).)

Source Law

2.12.A. . . . Managers need not be residents of this State or members of the limited liability company unless the regulations so require. . . .

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

and addresses of the initial managers, if any, shall be stated in the articles of organization. . . .

Revisor's Note

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

Revised Law

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

- (1) for the term, if any, for which the manager is elected and until the manager's successor is elected; or
- (2) until the earlier resignation, removal, or death of the manager. (TLLCA 2.13 (part).)

Source Law

2.13.A. . . . Unless otherwise provided in the regulations or in any resolution of the managers or members appointing that manager in accordance with the regulations or articles of organization, each manager shall hold office for the term for which elected, if any term is specified, and until that manager's successor has been elected, or until that manager's earlier death, resignation, or removal. . . .

Revisor's Note

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

Revised Law

Sec. 101.304. REMOVAL. Subject to Section 101.306(a), a manager of a limited liability company may be removed, with or without cause, at a meeting of the company's members called for that purpose. (TLLCA 2.13 (part).)

Source Law

2.13.A. . . . The regulations may provide that at any meeting of members called expressly for that purpose any managers may

be removed, with or without cause, as provided therein; however

Revisor's Note

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

Revised Law

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

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

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

(b) A person elected to fill a vacancy in the position of a manager serves for the unexpired term of the person's predecessor. (TLLCA 2.15.A, B.)

Source Law

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

B. Unless otherwise provided in the articles of organization or the regulations,

any vacancy occurring in the managers to be filled by reason of an increase in the number of managers may be filled by election at an annual or special meeting of members called for that purpose.

Revisor's Note

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

Revised Law

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

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

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

(2) a majority vote of the members of the class or group. (TLLCA 2.13 (part), 2.15.C.)

Source Law

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

[2.15]

C. Notwithstanding Sections A and B of this Article, whenever the holders of any class or series of membership interests are entitled to elect one or more managers by the provisions of the regulations, any vacancies, and any newly created managers of such class or series to be filled by reason of an increase in the number of such managers may be filled by the affirmative vote of a

majority of the managers, elected by such class or series then in office or by a sole remaining manager so elected, or by the vote of the holders of the outstanding membership interests of such class or series, and such vacancy shall not in any case be filled by the vote of the remaining managers or the holders of the outstanding membership interests as a whole unless otherwise provided in the regulations.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 101.307. METHODS OF CLASSIFYING MANAGERS. Other methods of classifying managers of a limited liability company, including providing for managers who serve for staggered terms of office or terms that are not uniform, may be established in the company agreement. (TLLCA 2.14.)

Source Law

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

by an amendment to the regulations adopted by the members.

Revisor's Note

The revised law merely simplifies language in the Texas Limited Liability Company Act. No substantive change is intended.

[Sections 101.308-101.350 reserved for expansion]

SUBCHAPTER H. MEETINGS AND VOTING

Revised Law

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

- (1) the governing authority of a limited liability company;
- (2) the members of a limited liability company if the members do not constitute the governing authority of the company; and
- (3) a committee of the governing authority of a limited liability company. (TLLCA 2.12.A (part).)

Source Law

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

Revisor's Note

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

Revised Law

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

(b) If the members of a limited liability company do not constitute the governing authority of the company, notice

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

- (1) the meeting is a special meeting; or
- (2) a purpose of the meeting is to consider a matter described by Section 101.356. (TLLCA 2.12.A (part), 2.19.B, C, D.)

Source Law

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

[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.

C. Except as otherwise provided in the articles of organization or the regulations, if the limited liability company is without managers, regular meetings of members may be held with or without notice as prescribed in the regulations and special meetings of members may be held with or without notice as prescribed in the regulations, unless any such meeting is to consider any of those matters set forth in Section D, Article 2.23, of this Act. Except as otherwise provided in the articles of organization or the regulations, for any meeting of the members at which any of the matters set forth in Section D, Article 2.23, of this Act are to be considered, written or printed notice stating the place, day, and hour of the meeting and describing the purpose or purposes of such meeting shall be delivered to the members not less than 10 or more than 60 days before the meeting, either personally

or by mail.

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

Revisor's Note

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

Revised Law

Sec. 101.353. QUORUM. A majority of all of the governing persons, members, or committee members of a limited liability company constitutes a quorum for the purpose of transacting business at a meeting of the governing authority, members, or committee of the company, as appropriate. (TLLCA 2.23.A (part).)

Source Law

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

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 101.354. EQUAL VOTING RIGHTS. Each governing person, member, or committee member of a limited liability company has an equal vote at a meeting of the governing authority, members, or committee of the company, as appropriate. (TLLCA 2.23.F.)

Source Law

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

Revisor's Note

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

Revised Law

Sec. 101.355. ACT OF GOVERNING AUTHORITY, MEMBERS, OR COMMITTEE. Except as provided by this title or Title 1, the affirmative vote of the majority of the governing persons, members, or committee members of a limited liability company present at a meeting at which a quorum is present constitutes an act of the governing authority, members, or committee of the company, as appropriate. (TLLCA 2.23.A (part), F.)

Source Law

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

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

Revisor's Note

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

certificate of formation.

Revised Law

Sec. 101.356. VOTES REQUIRED TO APPROVE CERTAIN ACTIONS.

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

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

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

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

(e) A requirement that an action of a limited liability company must be approved by the company's members does not apply during the period prescribed by Section 101.101(b). (TLLCA 2.23.D, E, G, H.)

Source Law

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

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

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

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

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

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

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

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

. . . .

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

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

organization.

Revisor's Note

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

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

Section 101.356(c) requires that a fundamental business transaction receive approval of a majority of the members. The

sale of all or substantially all of the assets is not explicit in the source law but can be inferred from the source law because such a transaction would usually make it impossible to carry on the ordinary business of the limited liability company.

Revised Law

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

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

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

- (1) in person; or
- (2) by a proxy executed in writing by the manager or committee member, as appropriate. (TLLCA 2.23.A (part); New.)

Source Law

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

Revisor's Note

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

Revised Law

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

(b) Notwithstanding Sections 6.201 and 6.202, an action may be taken without holding a meeting, providing notice, or taking a vote if a written consent or consents stating the action to be taken is signed by the number of governing persons, members, or committee members of a limited liability company, as appropriate, necessary to have at least the minimum number of votes that would be necessary to take the action at a meeting at which each governing person, member, or committee member, as appropriate, entitled to vote on the action is present and votes. (TLLCA 2.23.B(1).)

Source Law

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

Revisor's Note

No substantive change is intended.

[Sections 101.359-101.400 reserved for expansion]

SUBCHAPTER I. MODIFICATION OF DUTIES; INDEMNIFICATION

Revised Law

Sec. 101.401. EXPANSION OR RESTRICTION OF DUTIES AND LIABILITIES. The company agreement of a limited liability company may expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person has to the company or to a member or manager of the company. (TLLCA 2.20.B.)

Source Law

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

Revisor's Note

No substantive change is intended.

Revised Law

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

- (1) indemnify a person;
- (2) pay in advance or reimburse expenses incurred by a

person; and

(3) purchase or procure or establish and maintain insurance or another arrangement to indemnify or hold harmless a person.

(b) In this section, "person" includes a member, manager, or officer of a limited liability company or an assignee of a membership interest in the company. (TLLCA 2.02.A, 2.20.A.)

Source Law

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

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.

Revisor's Note

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

[Sections 101.403-101.450 reserved for expansion]

SUBCHAPTER J. DERIVATIVE PROCEEDINGS

Revised Law

Sec. 101.451. DEFINITIONS. In this subchapter:

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

(2) "Member" includes a person who beneficially owns a membership interest through a voting trust or a nominee on the person's behalf. (TLLCA 8.12.A, C; TBCA 5.14.A.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

A. Certain Definitions. For purposes of this Article:

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

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

Revisor's Note

The revised law incorporates the provisions of the Texas Business Corporation Act referred to in Article 8.12.A, Texas Limited Liability Company Act, and tailors them to apply to limited liability companies. No substantive change is intended.

Revised Law

Sec. 101.452. STANDING TO BRING PROCEEDING. A member may

not institute or maintain a derivative proceeding unless:

(1) the member:

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

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

(2) the member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company. (TLLCA 8.12.A, C; TBCA 5.14.B.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

(1) was a shareholder of the

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

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

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

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

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

(3) irreparable injury to the limited liability company would result by waiting for the expiration of the 90-day period. (TLLCA 8.12.A, C; TBCA 5.14.C.)

Source 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.

. . .

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

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

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

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

(4) a reference to a director

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

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

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

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

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

(3) a panel of one or more independent and disinterested persons appointed by the court on a motion by the limited liability company listing the names of the persons to be appointed and stating that, to the best of the limited liability company's knowledge, the persons to be appointed are disinterested and qualified to make the determinations contemplated by Section 101.458.

(b) The court shall appoint a panel under Subsection (a)(3) if the court finds that the persons recommended by the limited liability company are independent and disinterested and are otherwise qualified with respect to expertise, experience, independent judgment, and other factors considered appropriate by the court under the circumstances to make the determinations. A person appointed by the court to a panel under this section may not be held liable to the limited liability company or the limited liability company's members for an action taken or omission made by the person in that capacity, except for acts or omissions constituting fraud or wilful misconduct. (TLLCA 8.12.A, C; TBCA 5.14.H.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

(1) a majority vote of independent and disinterested directors present at a meeting of the board of directors at which interested directors are not present (at the time of the vote) if the independent and disinterested directors constitute a quorum of the board of directors;

(2) a majority vote of a committee consisting of two or more independent and disinterested directors appointed by a majority vote of one or more independent and disinterested directors present at a meeting of the board of directors, whether or not the independent and disinterested directors so acting constitute a quorum of the board of directors; or

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

Revisor's Note

See the revisor's note to Section
101.451. No substantive change is intended.

Revised Law

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

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

(c) If the review and determination made by the person or group is not completed before the 61st day after the date on which the court orders the stay, the stay may be renewed for one or more additional 60-day periods if the domestic or foreign limited liability company provides the court and the member with a written statement of the status of the review and the reasons why a continued extension of the stay is necessary. (TLLCA 8.12.A, C; TBCA 5.14.D(1).)

Source 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.

. . .

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

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

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

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

(4) a reference to a director

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14.D]

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

Sec. 101.456. DISCOVERY. (a) If a domestic or foreign limited liability company proposes to dismiss a derivative

proceeding under Section 101.458, discovery by a member after the filing of the derivative proceeding in accordance with this subchapter shall be limited to:

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

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

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

(b) Discovery described by Subsection (a) may not be expanded to include a fact or substantive matter regarding the act, omission, or other matter that is the subject matter of the derivative proceeding. The scope of discovery may be expanded if the court determines after notice and hearing that a good faith review of the allegations for purposes of Section 101.458 has not been made by an independent and disinterested person or group in accordance with that section. (TLLCA 8.12.A, C; TBCA 5.14.D(2).)

Source 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.

. . . .

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

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

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

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

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

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

(6) a reference to bylaws includes

regulations.

[TBCA 5.14.D]

(2) If a domestic or foreign corporation proposes to dismiss a derivative proceeding pursuant to Section F of this Article, discovery by a shareholder following the filing of the derivative proceeding in accordance with the provisions of this Article shall be limited to facts relating to whether the person or group described in Section H of this Article is independent and disinterested, the good faith of the inquiry and review by such person or group, and the reasonableness of the procedures followed by such person or group in conducting its review and will not extend to any facts or substantive matters with respect to the act, omission, or other matter that is the subject matter of the action in the derivative proceeding. The scope of discovery may be expanded if the court determines after notice and hearing that a good faith review of the allegations for purposes of Section F of this Article has not been made by an independent and disinterested person or group in accordance with Section F of this Article.

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

- (1) the 91st day after the date of the demand; or
- (2) the 31st day after the date the limited liability company advises the member that the demand has been rejected or the review has been completed. (TLLCA 8.12.A, C; TBCA 5.14.E.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

(b) In determining whether the requirements of Subsection

(a) have been met, the burden of proof shall be on:

(1) the plaintiff member if:

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

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

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

(2) the limited liability company in any other circumstance. (TLLCA 8.12.A, C; TBCA 5.14.F.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

F. Dismissal of Derivative Proceeding.
A court shall dismiss a derivative proceeding

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

(1) the plaintiff shareholder, if a majority of the board of directors consists of independent and disinterested directors at the time the determination is made or if the determination is made by a panel of one or more independent and disinterested persons appointed under Section H(3) of this Article; or

(2) the corporation, in all other circumstances; provided that if the corporation presents prima facie evidence that demonstrates that the directors appointed pursuant to Section H(2) of this Article are independent and disinterested, the burden of proof is on the plaintiff shareholder.

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

Sec. 101.459. ALLEGATIONS IF DEMAND REJECTED. If a derivative proceeding is instituted after a demand is rejected, the petition must allege with particularity facts that establish that the rejection was not made in accordance with the requirements of Sections 101.454 and 101.458. (TLLCA 8.12.A, C; TBCA 5.14.G.)

Source 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.

. . .

C. For purposes of the application of

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

(b) The court shall direct that notice be given to the affected members if the court determines that a proposed discontinuance or settlement may substantially affect the interests of other members. (TLLCA 8.12.A, C; TBCA 5.14.I.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

(1) attorney's fees;

(2) costs of pursuing an investigation of the matter that was the subject of the derivative proceeding; or

(3) expenses for which the domestic or foreign limited

liability company may be required to indemnify another person.

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

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

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

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

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

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

(C) was interposed for an improper purpose, such as to harass, cause unnecessary delay, or cause a needless increase in the cost of litigation. (TLLCA 8.12.A, C; TBCA 5.14.J.)

Source 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.

. . .

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

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

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

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

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

members, a member who manages the limited liability company;

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

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

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

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

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

(a) attorney's fees;

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

(c) expenses for which the domestic or foreign corporation or a

corporate defendant may be required to indemnify another person.

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

Sec. 101.462. APPLICATION TO FOREIGN LIMITED LIABILITY COMPANIES. (a) In a derivative proceeding brought in the right of a foreign limited liability company, the matters covered by this subchapter are governed by the laws of the jurisdiction of organization of the foreign limited liability company, except for Sections 101.455, 101.460, and 101.461, which are procedural provisions and do not relate to the internal affairs of the foreign limited liability company.

(b) In the case of matters relating to a foreign limited liability company under Section 101.454, a reference to a person or group of persons described by that section refers to a person or group entitled under the laws of the jurisdiction of organization of the foreign limited liability company to review and dispose of a derivative proceeding. The standard of review of a decision made by the person or group to dismiss the derivative proceeding shall be governed by the laws of the jurisdiction of organization of the foreign limited liability company. (TLLCA 8.12.A, C; TBCA 5.14.K.)

Source 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.

. . .

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

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

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

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

(4) a reference to a director includes a manager or, to the extent that the management of the limited liability company

is reserved in whole or in part to the members, a member who manages the limited liability company;

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

Revised Law

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

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

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

(c) If justice requires:

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

(2) a recovery in a direct or derivative proceeding by a member may be paid directly to the plaintiff or to the limited liability company if necessary to protect the interests of creditors or other members of the limited liability company.
(TLLCA 8.12.A, C; TBCA 5.14.L.)

Source 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.

. . .

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

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

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

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

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

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

(6) a reference to bylaws includes regulations.

[TBCA 5.14]

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

(a) a derivative proceeding brought by a shareholder of a closely held

corporation may be treated by a court as a direct action brought by the shareholder for his own benefit; and

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

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

(a) with less than 35 shareholders; and

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

Revisor's Note

See the revisor's note to Section 101.451. No substantive change is intended.

[Sections 101.464-101.500 reserved for expansion]

SUBCHAPTER K. SUPPLEMENTAL RECORDKEEPING REQUIREMENTS

Revised Law

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

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

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

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

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

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

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

agreement; and

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

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

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

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

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

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

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

(c) A limited liability company shall keep at its registered office located in this state and make available to a member of the company on reasonable request the street address of the company's principal office in the United States in which the records required by this section and Section 3.151 are maintained or made available. (TLLCA 2.22.A, C.)

Source Law

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

(1) a current list that states:

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

Revisor's Note

No substantive change is intended. The requirement that a limited liability company maintain books and records of account is

found in Section 3.151, pertaining to all filing entities.

Revised Law

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

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

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

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

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

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

(3) any tax returns described by Section 101.501(a)(2). (TLLCA 2.22.D, E.)

Source Law

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

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

(1) the articles of organization

and regulations and all amendments or restatements; and

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

Revisor's Note

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

[Sections 101.503-101.550 reserved for expansion]

SUBCHAPTER L. SUPPLEMENTAL WINDING UP
AND TERMINATION PROVISIONS

Revised Law

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

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

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

(3) a person appointed by the court to carry out the winding up of the company under Section 11.054, 11.405, 11.409, or 11.410. (TLLCA 6.03.)

Source Law

6.03.A. On the dissolution of a limited liability company, the limited liability company's affairs shall be wound up as soon as reasonably practicable. The winding up shall be accomplished by the managers or members or by any other person or persons designated by the articles of organization, by the regulations, or by resolution of the managers or members. In addition, a court of competent jurisdiction, on cause shown, may wind up the limited liability company's affairs on application of any member or the member's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation

and may make all other orders, directions, and inquiries that the circumstances require.

Revisor's Note

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

Revised Law

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

- (1) a voluntary winding up of the company under Chapter 11;
- (2) a revocation of a voluntary decision to wind up the company under Section 11.151;
- (3) a cancellation of an event requiring the winding up of the company under Section 11.152; or
- (4) a reinstatement of a terminated company under Section 11.202. (TLLCA 6.01, 6.06.)

Source Law

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;
- (4) if no capital has been paid into the limited liability company, the act of a majority of the managers or members named in the articles of organization to dissolve the limited liability company;
- (5) except as otherwise provided in the regulations, upon the death, expulsion, withdrawal pursuant to or as provided in the articles of organization or regulations, bankruptcy, or dissolution of a

member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company; or

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

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

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

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

Revisor's Note

Section 101.552 provides that the requirements for approval of the voluntary winding up of a limited liability company, or the revocation of that winding up, or the cancellation of an event requiring the winding up, or a reinstatement of a terminated limited liability company, are a majority vote of the limited liability company's members or, if the company has no members, a majority vote of all of the company managers. Existing law requires a majority vote of the members of the limited liability company to voluntarily dissolve the company, the written consent of all members to revoke voluntary dissolution, and the vote of all members (or a different voting requirement stated in the company regulations) to continue the business of the company following certain events of dissolution. There is no specific provision in the Texas Limited Liability Company Act governing reinstatement of a terminated limited liability company. The requirement in the source law of a unanimous vote to continue after events of dissolution was based on federal income tax concerns that are no longer relevant. The trend in limited liability company statutes in other states is to eliminate the unanimity requirement for continuation after an event of dissolution. The changes made by the code result in the standardization of the voting requirement for these actions to a majority of the members. The alternative requirement of the approval of the actions by the managers of the limited liability company if there are no members is intended to parallel the source law provisions relating to manager approval when no capital has been paid into the company.

TITLE 4. PARTNERSHIPS

CHAPTER 151. GENERAL PROVISIONS

Revised Law

Sec. 151.001. DEFINITIONS. In this title:

(1) "Capital account" means the amount computed by:

(A) adding the amount of a partner's original and additional contributions of cash to a partnership, the agreed value of any other property that that partner originally or

additionally contributed to the partnership, and allocations of partnership profits to that partner; and

(B) subtracting the amount of distributions to that partner and allocations of partnership losses to that partner.

(2) "Foreign limited partnership" means a partnership formed under the laws of another state that has one or more general partners and one or more limited partners.

(3) "Majority-in-interest," with respect to all or a specified group of partners, means partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the partners or by the partners in the specified group, as appropriate.

(4) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership. (TRLPA 1.02(1), (3), (7), (10); TRPA 1.01(2), (8), (10), (12).)

Source Law

[TRLPA 1.02]

(1) "Capital account" means, unless otherwise provided in a written partnership agreement, the amount of a partner's original contribution to a limited partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and allocations to that partner of partnership profits and decreased by the amount of distributions to that partner and allocations to that partner of partnership losses.

(3) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

(7) "Majority in interest," unless otherwise provided in a written partnership agreement, means, as to all or any specified group of limited partners, partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in the specified group, as

appropriate.

(10) "Partnership agreement" means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

[TRPA 1.01]

(2) "Capital account" means the amount of a partner's original contribution to a partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and by profits credited to that partner under Section 4.01(b), and decreased by the amount of distributions to that partner and by losses charged to that partner under Section 4.01(b).

(8) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

(10) "Majority-in-interest" means, as to all of or a specified group of partners, partners owning more than 50 percent of the current interest in the profits of the partnership owned by all of the partners or by the partners in the specified group, as appropriate.

(12) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

Revisor's Note

No substantive change is intended for this portion of the revised law. As a general comment on Title 4, Chapter 152 of the code applies to general partnerships, and Chapter 153 of the code applies to limited partnerships. Chapters 151 and 154 are applicable to both general partnerships and limited partnerships and contain definitions and other provisions that are common to both

the Texas Revised Partnership Act and the Texas Revised Limited Partnership Act.

Revised Law

Sec. 151.002. KNOWLEDGE OF FACT. For purposes of this title, a person has knowledge of a fact only if the person has actual knowledge of the fact. (TRPA 1.02(a).)

Source Law

(a) Definition of Knowledge.

"Knowledge" means actual knowledge. A person knows of a fact only if the person has knowledge of it.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 151.003. NOTICE OF FACT. (a) For purposes of this title, a person has notice of a fact if the person:

- (1) has knowledge of the fact;
- (2) has received a communication of the fact as provided by Subsection (c); or
- (3) reasonably should have concluded, from all facts then known to that person, that the fact exists.

(b) A person notifies or gives notice to another person of a fact by taking actions reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually has knowledge of the fact.

(c) A person is notified or receives notice of a fact when the fact is communicated to:

- (1) the person;
- (2) the person's place of business; or
- (3) another place held out by the person as the place for receipt of communications.

(d) Receipt of notice by a partner of a fact relating to the partnership is effective immediately as notice to the partnership unless fraud against the partnership is committed by or with the consent of the partner receiving the notice. (TRPA 1.02(b), (c), (d), (e).)

Source Law

(b) Having Notice. A person has notice of a fact if the person:

- (1) knows of the fact;
- (2) has received a communication of the fact as provided by Subsection (d); or
- (3) reasonably should have concluded, from all facts known to that person at the time in question, that the fact

exists.

(c) Giving Notice. A person notifies or gives a notice to another person of a fact by taking steps reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually comes to know of the fact.

(d) Receiving Notice. A person is notified or receives a notice of a fact when the fact is communicated to:

- (1) the person;
- (2) the person's place of business; or
- (3) another place held out by the person as the place for receipt of communications.

(e) Notice to Partner as Notice to Partnership. Receipt of notice by a partner of a fact relating to the partnership is effective immediately as notice to the partnership except in the case of fraud on the partnership committed by or with the consent of the partner receiving the notice.

Revisor's Note

No substantive change is intended.

CHAPTER 152. GENERAL PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 152.001. DEFINITIONS. In this chapter:

- (1) "Event of withdrawal" or "withdrawal" means an event specified by Section 152.501(b).
- (2) "Event requiring a winding up" means an event specified by Section 11.051 or 11.057.
- (3) "Foreign limited liability partnership" means a partnership that:
 - (A) is foreign; and
 - (B) has the status of a limited liability partnership pursuant to the laws of the jurisdiction of formation.
- (4) "Other partnership provisions" means the provisions of Chapters 151 and 154 and Title 1 to the extent applicable to partnerships.
- (5) "Transfer" includes:
 - (A) an assignment;
 - (B) a conveyance;
 - (C) a lease;

- (D) a mortgage;
- (E) a deed;
- (F) an encumbrance; and
- (G) the creation of a security interest.

(6) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred. (TRPA 1.01(6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19).)

Source Law

(6) "Event of withdrawal" or "withdrawal" means an event specified by Section 6.01(b).

(7) "Event requiring a winding up" means an event specified by Section 8.01.

(8) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

(9) "Foreign limited liability partnership" means a partnership that:

(A) is formed under laws other than the laws of Texas; and

(B) has the status of a registered limited liability partnership under those laws.

(10) "Majority-in-interest" means, as to all of or a specified group of partners, partners owning more than 50 percent of the current interest in the profits of the partnership owned by all of the partners or by the partners in the specified group, as appropriate.

(11) "Partnership" means an entity created as described by Section 2.02(a). The term includes a registered limited liability partnership formed under Section 3.08 or under the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments.

(12) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

(13) "Partnership interest" means a partner's interest in a partnership, including the partner's share of profits and losses or similar items, and the right to

receive distributions. A partnership interest does not include a partner's right to participate in management.

(14) "Person" includes an individual, corporation, business trust, estate, trust, custodian, trustee, executor, administrator, nominee, partnership (including a registered limited liability partnership and a limited partnership), association, limited liability company, government, governmental subdivision, governmental agency, governmental instrumentality, and any other legal or commercial entity, in its own or representative capacity.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or an interest in that property.

(16) "Registered limited liability partnership" means a partnership registered under Section 3.08(b) and complying with Sections 3.08(c) and (d)(1).

(17) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Transfer" includes:

- (A) an assignment;
- (B) a conveyance;
- (C) a lease;
- (D) a mortgage;
- (E) a deed;
- (F) an encumbrance; and
- (G) the creation of a security interest.

(19) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred. A partner withdraws if an event of withdrawal has occurred with respect to that partner under Section 6.01.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.002. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE AND VARIABLE PROVISIONS. (a) 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 chapter and the other partnership provisions govern the relationship of the partners and between the partners and the partnership.

(b) A partnership agreement or the partners may not:

(1) unreasonably restrict a partner's right of access to books and records under Section 152.212;

(2) eliminate the duty of loyalty under Section 152.205, except that the partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable;

(3) eliminate the duty of care under Section 152.206, except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 152.204(b), except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 152.501(b)(1), (7), or (8), except for the requirement that notice be in writing;

(6) vary the right to expel a partner by a court in an event specified by Section 152.501(b)(5);

(7) restrict rights of a third party under this chapter or the other partnership provisions, except for a limitation on an individual partner's liability in a limited liability partnership as provided by this chapter;

(8) select a governing law not permitted under Sections 1.103 and 1.002(43)(C); or

(9) except as provided in Subsections (c) and (d), waive or modify the following provisions of Title 1:

(A) Chapter 1, if the provision is used to interpret a provision or to define a word or phrase contained in a section listed in this subsection;

(B) Chapter 2, other than Sections 2.104(c)(2), 2.104(c)(3), and 2.113;

(C) Chapter 3, other than Subchapters C and E of that chapter; or

(D) Chapters 4, 5, 10, 11, and 12, other than Sections 11.057(a)(1), (2), (5), and (6) and 11.057(b).

(c) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is waived or modified authorizes the partnership to waive or modify

the provision in the partnership's governing documents.

(d) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is modified specifies:

(1) the person or group of persons entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved. (TRPA 1.03.)

Source Law

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.

(b) Statutory Provisions that may not be Varied by Agreement. A partnership agreement or the partners may not:

(1) unreasonably restrict a partner's right of access to books and records under Section 4.03(b);

(2) eliminate the duty of loyalty under Section 4.04(b), but the partners may by agreement identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable;

(3) eliminate the duty of care under Section 4.04(c), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 4.04(d), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 6.01(b)(1), (7), or (8), except to require the notice to be in writing;

(6) vary the right to expel a

partner by a court in the events specified by Section 6.01(b)(5);

(7) vary the requirement to wind up the partnership business in the events specified by Section 8.01(c), (d), or (e);

(8) restrict rights of third parties under this Act, except for limitations on individual partners' liability in a registered limited liability partnership as provided or permitted by Section 3.08; or

(9) select a governing law not permitted under Section 1.05(a)(1).

Revisor's Note

No substantive change is intended as to Subsection (a) of the revised law. Section 152.002(b) lists certain statutory provisions that cannot be waived or modified by the partners in a partnership agreement and is based on Section 1.03(b), Texas Revised Partnership Act. Section 152.002(b), however, reflects the move of certain provisions of the Texas Revised Partnership Act to Title 1. Specifically, Section 152.002(b)(9) provides that, with certain exceptions, a partnership agreement or the partners may not waive or modify specific chapters in Title 1.

Section 152.002(c) is new and provides that a partnership agreement or the partners may waive or modify a statutory provision listed in Section 152.002(b)(9) if the statutory provision expressly permits a waiver or modification in the partnership's governing documents.

Section 152.002(d) is new and provides that a partnership agreement or the partners may modify a statutory provision listed in Section 152.002(b)(9) to the extent that the statutory provision specifies the persons or group of persons entitled to approve an action of the partnership or the vote or other method by which such an action is to be approved.

Revised Law

Sec. 152.003. SUPPLEMENTAL PRINCIPLES OF LAW. The principles of law and equity and the other partnership provisions supplement this chapter unless otherwise provided by this chapter

or the other partnership provisions. (TRPA 1.04(a).)

Source Law

(a) Supplemented by Law and Equity.
Unless displaced by a particular provision of this Act, the principles of law and equity supplement this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.004. RULE OF STATUTORY CONSTRUCTION NOT APPLICABLE. The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter or the other partnership provisions. (TRPA 1.04(b).)

Source Law

(b) Strict Construction not Applicable.
The rule that a statute in derogation of the common law is to be strictly construed does not apply to this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.005. APPLICABLE INTEREST RATE. If an obligation to pay interest arises under this chapter and the rate is not specified, the interest rate is the rate specified by Section 302.002, Finance Code. (TRPA 1.04(c).)

Source Law

(c) Interest Rate. If an obligation to pay interest arises under this Act and the rate is not specified, the rate is the rate specified by Section 302.002, Finance Code, or a successor statute.

Revisor's Note

No substantive change is intended.

[Sections 152.006-152.050 reserved for expansion]

SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

Revised Law

Sec. 152.051. PARTNERSHIP DEFINED. (a) In this section, "association" does not have the meaning of the term "association" under Section 1.002.

(b) Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a

business for profit as owners creates a partnership, regardless of whether:

- (1) the persons intend to create a partnership; or
- (2) the association is called a "partnership," "joint venture," or other name.

(c) An association or organization is not a partnership if it was created under a statute other than:

- (1) this title and the provisions of Title 1 applicable to partnerships and limited partnerships;
- (2) a predecessor to a statute referred to in Subdivision (1); or
- (3) a comparable statute of another jurisdiction.

(d) The provisions of this chapter govern limited partnerships only to the extent provided by Sections 153.003 and 153.152 and Subchapter H, Chapter 153. (TRPA 2.02(a), (b).)

Source Law

(a) Association to Carry on Business for Profit. Except as provided by Subsections (b) and (c), an association of two or more persons to carry on a business for profit as owners creates a partnership, whether the persons intend to create a partnership and whether the association is called a "partnership," "joint venture," or other name. A partnership may be created under:

- (1) this Act;
- (2) the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments;
- (3) the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments; or
- (4) a statute of another jurisdiction comparable to this Act or the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

(b) Entity Not a Partnership. An association or entity created under a law other than the laws described in Subsection (a) is not a partnership.

Revisor's Note

Section 152.051(a) is new and has been added to clarify that, in this section,

"association" has the plain English meaning, not the meaning used in Chapter 1 of the Code. Section 152.051(d) is new and has been added as an appropriate cross-reference to the provisions in Chapter 153 dealing with "linkage" between the general partnership provisions and the limited partnership provisions.

Revised Law

Sec. 152.052. RULES FOR DETERMINING IF PARTNERSHIP IS CREATED. (a) Factors indicating that persons have created a partnership include the persons':

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) agreement to share or sharing:

(A) losses of the business; or

(B) liability for claims by third parties against the business; and

(5) agreement to contribute or contributing money or property to the business.

(b) One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits as payment:

(A) of a debt, including repayment by installments;

(B) of wages or other compensation to an employee or independent contractor;

(C) of rent;

(D) to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) of interest or other charge on a loan, regardless of whether the amount varies with the profits of the business, including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) of consideration for the sale of a business or other property, including payment by installments;

(2) co-ownership of property, regardless of whether the co-ownership:

(A) is a joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership; or

(B) is combined with sharing of profits from the property;

(3) the right to share or sharing gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) An agreement by the owners of a business to share losses is not necessary to create a partnership. (TRPA 2.03.)

Source Law

2.03. (a) Factors Indicating Creation of Partnership. Factors indicating that persons have created a partnership include their:

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) sharing or agreeing to share:

(A) losses of the business;

or

(B) liability for claims by third parties against the business; and

(5) contributing or agreeing to contribute money or property to the business.

(b) Factors Not Indicating Creation of Partnership. One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits:

(A) as repayment of a debt, by installments or otherwise;

(B) as payment of wages or other compensation to an employee or independent contractor;

(C) as payment of rent;

(D) as payment to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) as payment of interest or other charge on a loan, regardless of whether the amount of payment varies with the profits

of the business, and including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) as payment of consideration for the sale of a business or other property by installments or otherwise;

(2) co-ownership of property, whether in the form of joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership, whether combined with sharing of profits from the property;

(3) sharing or having a right to share gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) Additional Rules. An agreement to share losses by the owners of a business is not necessary to create a partnership. Except as provided by Sections 3.06 and 7.03, a person who is not a partner in a partnership under Section 2.02 is not a partner as to a third person and is not liable to a third person under this Act.

Revisor's Note

No substantive change is intended. The last sentence of Section 2.03(c), Texas Revised Partnership Act, is included in Section 152.053(b).

Revised Law

Sec. 152.053. QUALIFICATIONS TO BE PARTNER; NONPARTNER'S LIABILITY TO THIRD PERSON. (a) A person may be a partner unless the person lacks capacity apart from this chapter.

(b) Except as provided by Section 152.307, a person who is not a partner in a partnership under Section 152.051 is not a partner as to a third person and is not liable to a third person under this chapter. (TRPA 2.02(c), 2.03(c).)

Source Law

[2.02]

(c) Person with Capacity as Partner. A

person may be a partner unless the person lacks capacity apart from this Act.

[2.03]

(c) Additional Rules. An agreement to share losses by the owners of a business is not necessary to create a partnership. Except as provided by Sections 3.06 and 7.03, a person who is not a partner in a partnership under Section 2.02 is not a partner as to a third person and is not liable to a third person under this Act.

Revisor's Note

The last sentence of Section 2.03(c), Texas Revised Partnership Act, regarding partners' liability to third parties, has been separated from the rule regarding the sharing of losses and given its own section.

Revised Law

Sec. 152.054. FALSE REPRESENTATION OF PARTNERSHIP OR PARTNER. (a) A false representation or other conduct falsely indicating that a person is a partner with another person does not of itself create a partnership.

(b) A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership. (TRPA 3.06(a), (b).)

Source Law

(a) Representation of Partnership. A representation or other conduct indicating that a person is a partner with another person, if that is not the case, does not of itself create a partnership.

(b) Representation of Membership in Partnership. A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.055. AUTHORITY OF CERTAIN PROFESSIONALS TO CREATE PARTNERSHIP. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State

Board of Medical Examiners and persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(b) When doctors of medicine, osteopathy, and podiatry create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(c) The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses. (TRPA 2.02(e).)

Source Law

(e) Authority of Doctors of Medicine and Osteopathy and Podiatrists to Create Partnership. Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.056. PARTNERSHIP AS ENTITY. A partnership is an entity distinct from its partners. (TRPA 2.01.)

Source Law

2.01. A partnership is an entity distinct from its partners.

Revisor's Note

No substantive change is intended.

[Sections 152.057-152.100 reserved for expansion]

SUBCHAPTER C. PARTNERSHIP PROPERTY

Revised Law

Sec. 152.101. NATURE OF PARTNERSHIP PROPERTY. Partnership property is not property of the partners. A partner or a partner's spouse does not have an interest in partnership property. (TRPA 2.04.)

Source Law

2.04. Partnership property is not property of the partners. Neither a partner nor a partner's spouse has an interest in partnership property.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.102. CLASSIFICATION AS PARTNERSHIP PROPERTY. (a) Property is partnership property if acquired in the name of:

- (1) the partnership; or
- (2) one or more partners, regardless of whether the name of the partnership is indicated, if the instrument transferring title to the property indicates:

- (A) the person's capacity as a partner; or
- (B) the existence of a partnership.

(b) Property is presumed to be partnership property if acquired with partnership property, regardless of whether the property is acquired as provided by Subsection (a).

(c) Property acquired in the name of one or more partners is presumed to be the partner's property, regardless of whether the property is used for partnership purposes, if the instrument transferring title to the property does not indicate the person's capacity as a partner or the existence of a partnership, and if the property is not acquired with partnership property.

(d) For purposes of this section, property is acquired in the name of the partnership by a transfer to:

- (1) the partnership in its name; or
 - (2) one or more partners in the partners' capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- (TRPA 2.05.)

Source Law

2.05. (a) Acquisition in Certain Names.
Property is partnership property if
acquired:

- (1) in the name of the
partnership; or
- (2) in the name of one or more
partners with an indication in the instrument
transferring title to the property of the
person's capacity as a partner or of the
existence of a partnership, regardless of
whether the name of the partnership is
indicated.

(b) Property in Partnership Name.
Property is acquired in the name of the
partnership by a transfer to:

- (1) the partnership in its name;
or
- (2) one or more partners in their
capacity as partners in the partnership, if
the name of the partnership is indicated in
the instrument transferring title to the
property.

(c) Property Acquired with Partnership
Property. Property is presumed to be
partnership property if acquired with
partnership property, whether acquired in the
name of the partnership or of one or more
partners with an indication in the instrument
transferring title to the property of the
person's capacity as a partner or of the
existence of a partnership.

(d) Property Acquired in Partner's
Name. Property acquired in the name of one
or more of the partners, without an
indication in the instrument transferring
title to the property of the person's
capacity as a partner or of the existence of
a partnership, and without use of partnership
property, is presumed to be the partner's
property, regardless of whether the property
is used for partnership purposes.

Revisor's Note

No substantive change is intended.

[Sections 152.103-152.200 reserved for expansion]

SUBCHAPTER D. RELATIONSHIP BETWEEN PARTNERS AND BETWEEN
PARTNERS AND PARTNERSHIPS

Revised Law

Sec. 152.201. ADMISSION AS PARTNER. A person may become a partner only with the consent of all partners. (TRPA 4.01(g).)

Source Law

(g) New Partner. A person may become a partner only with the consent of all partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.202. CREDITS OF AND CHARGES TO PARTNER. (a) Each partner is credited with an amount equal to:

(1) the cash and the value of property the partner contributes to a partnership; and

(2) the partner's share of the partnership's profits.

(b) Each partner is charged with an amount equal to:

(1) the cash and the value of other property distributed by the partnership to the partner; and

(2) the partner's share of the partnership's losses.

(c) Each partner is entitled to be credited with an equal share of the partnership's profits and is chargeable with a share of the partnership's capital or operating losses in proportion to the partner's share of the profits. (TRPA 4.01(a), (b).)

Source Law

(a) Capital Credits and Charges. Each partner is credited with an amount equal to the cash plus the value of property the partner contributes to a partnership and the partner's share of the partnership's profits. Each partner is charged with an amount equal to the cash plus the value of other property distributed by the partnership to the partner and the partner's share of the partnership's losses.

(b) Profits and Losses. Each partner is entitled to be credited with an equal share of the partnership's profits and is chargeable with a share of the partnership's losses, whether capital or operating, in proportion to the partner's share of the

profits.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.203. RIGHTS AND DUTIES OF PARTNER. (a) Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

(b) A partner may use or possess partnership property only on behalf of the partnership.

(c) A partner is not entitled to receive compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

(d) A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid and to receive interest from the date of the:

- (1) payment or advance; or
- (2) incurrence of the liability. (TRPA 4.01(c), (d), (e), (f).)

Source Law

(c) Disproportionate Payment or Advance. A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid by the partnership and to receive interest from the partnership from the date of the payment or advance or the incurrence of the liability.

(d) Participation in Management. Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

(e) Partnership Property. A partner may use or possess partnership property only on behalf of the partnership.

(f) Compensation. A partner is not

entitled to compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.204. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a) A partner owes to the partnership and the other partners:

- (1) a duty of loyalty; and
- (2) a duty of care.

(b) A partner shall discharge the partner's duties to the partnership and the other partners under this code or under the partnership agreement and exercise any rights and powers in the conduct or winding up of the partnership business:

- (1) in good faith; and
- (2) in a manner the partner reasonably believes to be in the best interest of the partnership.

(c) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(d) A partner, in the partner's capacity as partner, is not a trustee and is not held to the standards of a trustee. (TRPA 4.04(a), (d), (e), (f).)

Source Law

(a) Duties. A partner owes to the partnership and the other partners:

- (1) a duty of loyalty; and
- (2) a duty of care.

. . .

(d) Method of Discharge. A partner shall discharge the partner's duties to the partnership and the other partners under this Act or under the partnership agreement, and exercise any rights and powers in the conduct or winding up of the partnership business:

- (1) in good faith; and
- (2) in a manner the partner reasonably believes to be in the best interest of the partnership.

(e) Effect of Partner Benefit. A partner does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) Trustee Standard Inapplicable. A partner, in that capacity, is not a trustee and is not held to the same standards as a trustee.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.205. PARTNER'S DUTY OF LOYALTY. A partner's duty of loyalty includes:

(1) accounting to and holding for the partnership property, profit, or benefit derived by the partner:

(A) in the conduct and winding up of the partnership business; or

(B) from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a person who has an interest adverse to the partnership; and

(3) refraining from competing or dealing with the partnership in a manner adverse to the partnership. (TRPA 4.04(b).)

Source Law

(b) Loyalty. A partner's duty of loyalty includes:

(1) accounting to the partnership and holding for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a party having an interest adverse to the partnership; and

(3) refraining from competing with the partnership or dealing with the partnership in a manner adverse to the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.206. PARTNER'S DUTY OF CARE. (a) A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar

circumstances.

(b) An error in judgment does not by itself constitute a breach of the duty of care.

(c) A partner is presumed to satisfy the duty of care if the partner acts on an informed basis and in compliance with Section 152.204(b). (TRPA 4.04(c).)

Source Law

(c) Care. A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar circumstances. An error in judgment does not by itself constitute a breach of this duty of care. A partner is presumed to satisfy this duty if the partner acts on an informed basis and in compliance with Subsection (d).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.207. STANDARDS OF CONDUCT APPLICABLE TO PERSON WINDING UP PARTNERSHIP BUSINESS. Sections 152.204-152.206 apply to a person winding up the partnership business as the personal or legal representative of the last surviving partner to the same extent that those sections apply to a partner. (TRPA 4.04(g).)

Source Law

(g) Application to Nonpartner Winding Up. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.208. AMENDMENT TO PARTNERSHIP AGREEMENT. A partnership agreement may be amended only with the consent of all partners. (TRPA 4.01(i).)

Source Law

(i) Amendment of Agreement. An amendment to a partnership agreement may be effected only with the consent of all partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.209. DECISION-MAKING REQUIREMENT. (a) A difference arising in a matter in the ordinary course of the partnership business may be decided by a majority-in-interest of the partners.

(b) An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners. (TRPA 4.01(h).)

Source Law

(h) Majority Decision on Ordinary Matter. A difference arising as to a matter in the ordinary course of the business of the partnership may be decided by a majority-in-interest of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.210. PARTNER'S LIABILITY TO PARTNERSHIP AND OTHER PARTNERS. A partner is liable to a partnership and the other partners for:

- (1) a breach of the partnership agreement; or
- (2) a violation of a duty to the partnership or other partners under this chapter that causes harm to the partnership or the other partners. (TRPA 4.05.)

Source Law

4.05. A partner is liable to a partnership and the other partners for a breach of the partnership agreement or for a violation of a duty to the partnership or the other partners under this Act that causes harm to the partnership or the other partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.211. REMEDIES OF PARTNERSHIP AND PARTNERS. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting of partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this chapter, including:

(A) the partner's rights under Sections 152.201-152.209, 152.212, and 152.213;

(B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Subchapter H or to enforce any other right under Subchapters G and H; and

(C) the partner's rights under Subchapter I;

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship; or

(4) enforce a right under Chapter 11.

(c) The accrual of and a time limitation on a right of action for a remedy under this section is governed by other applicable law.

(d) A right to an accounting does not revive a claim barred by law. (TRPA 4.06.)

Source Law

4.06. (a) Action by Partnership. A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership causing harm to the partnership.

(b) Action by partner. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this Act, including:

(A) the partner's rights under Sections 4.01, 4.03, and 4.04;

(B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Section 7.01 or enforce any other right under Article 6 or 7; and

(C) the partner's rights under Article 8; or

(3) enforce the rights and otherwise protect the interests of the

partner, including rights and interests arising independently of the partnership relationship.

(c) Accrual of Action. The accrual of and a time limitation on a right of action for a remedy under this section is governed by other law.

(d) No Revival by Accounting. A right to an accounting does not revive a claim barred by law.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.212. BOOKS AND RECORDS OF PARTNERSHIP. (a) In this section, "access" includes the opportunity to inspect and copy books and records during ordinary business hours.

(b) A partnership shall keep its books and records, if any, at its chief executive office.

(c) A partnership shall provide access to its books and records to a partner or an agent or attorney of a partner.

(d) The partnership shall provide a former partner or an agent or attorney of a former partner access to books and records pertaining to the period during which the former partner was a partner or for any other proper purpose with respect to another period.

(e) A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished under this section. (TRPA 4.03(a), (b).)

Source Law

(a) Books and Records at Chief Executive Office. A partnership shall keep its books and records, if any, at its chief executive office.

(b) Access to Books and Records. A partnership shall provide access to its books and records to partners and their agents and attorneys. The partnership shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners or for any other proper purpose with respect to another period. The right of access includes the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge,

covering the costs of labor and material, for copies of documents furnished.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.213. INFORMATION REGARDING PARTNERSHIP. (a) On request and to the extent just and reasonable, each partner and the partnership shall furnish complete and accurate information concerning the partnership to:

- (1) a partner;
- (2) the legal representative of a deceased partner or a partner who has a legal disability; or
- (3) an assignee.

(b) A legal representative of a deceased partner or a partner who has a legal disability and an assignee are subject to the duties of a partner with respect to information made available. (TRPA 4.03(c).)

Source Law

(c) Information Concerning the Partnership. Each partner and the partnership shall furnish, on request and to the extent just and reasonable, to a partner, the legal representative of a deceased partner or a partner under legal disability, or an assignee, complete and accurate information concerning the partnership. A legal representative of a deceased partner or a partner under legal disability and an assignee are subject to the same duties as a partner with respect to information made available.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.214. CERTAIN THIRD-PARTY OBLIGATIONS NOT AFFECTED. Sections 152.203, 152.208, and 152.209 do not limit a partnership's obligations to another person under Sections 152.301 and 152.302. (TRPA 4.01(j).)

Source Law

(j) Partnership Obligation. This section does not limit a partnership's obligation to another person under Section 3.02.

Revisor's Note

No substantive change is intended.

[Sections 152.215-152.300 reserved for expansion]

SUBCHAPTER E. RELATIONSHIP BETWEEN PARTNERS AND OTHER PERSONS

Revised Law

Sec. 152.301. PARTNER AS AGENT. Each partner is an agent of the partnership for the purpose of its business. (TRPA 3.02(a) (part).)

Source Law

(a) Partner Agent of Partnership as to Partnership Business. Each partner is an agent of the partnership for the purpose of its business. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.302. BINDING EFFECT OF PARTNER'S ACTION. (a) Unless a partner does not have authority to act for the partnership in a particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of an instrument in the partnership name, binds the partnership if the act is apparently for carrying on in the ordinary course:

(1) the partnership business; or
(2) business of the kind carried on by the partnership.

(b) An act of a partner that is not apparently for carrying on in the ordinary course a business described by Subsection (a) binds the partnership only if authorized by the other partners.

(c) A conveyance of real property by a partner on behalf of the partnership not otherwise binding on the partnership binds the partnership if the property has been conveyed by the grantee or a person claiming through the grantee to be a holder for value without knowledge that the partner exceeded that partner's authority in making the conveyance. (TRPA 3.02(a) (part), (b), (c).)

Source Law

3.02. (a) Partner Agent of Partnership as to Partnership Business. . . . Unless the partner does not have authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of

an instrument in the partnership name, binds the partnership if the act is for apparently carrying on in the ordinary course:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(b) Act Outside Scope of Business. An act of a partner binds the partnership only if authorized by the other partners if the act is not apparently for carrying on in the ordinary course:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(c) Conveyance of Real Property. A conveyance of real property by the partner on behalf of the partnership not otherwise binding on the partnership does bind the partnership if the partnership real property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded that partner's authority.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.303. LIABILITY OF PARTNERSHIP FOR CONDUCT OF PARTNER. (a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting:

(1) in the ordinary course of business of the partnership; or

(2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property of a person who is not a partner that is:

(1) received in the course of the partnership's business; and

(2) misapplied by a partner while in the custody of the partnership. (TRPA 3.03.)

Source Law

3.03. (a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or

omission or other actionable conduct of a partner acting:

(1) in the ordinary course of business of the partnership; or

(2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property of a person not a partner that is received in the course of the partnership's business and misapplied by a partner while in the custody of the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.304. NATURE OF PARTNER'S LIABILITY. (a) Except as provided by Subsection (b) or Section 152.801(b), all partners are liable jointly and severally for a debt or obligation of the partnership unless otherwise:

(1) agreed by the claimant; or

(2) provided by law.

(b) A person who is admitted as a partner into an existing partnership does not have personal liability under Subsection (a) for an obligation of the partnership that:

(1) arises before the partner's admission to the partnership;

(2) relates to an action taken or omission occurring before the partner's admission to the partnership; or

(3) arises before or after the partner's admission to the partnership under a contract or commitment entered into before the partner's admission. (TRPA 3.04, 3.07.)

Source Law

3.04. Except as provided by Section 3.07 or 3.08(a), all partners are liable jointly and severally for all debts and obligations of the partnership unless otherwise agreed by the claimant or provided by law.

3.07. A person admitted as a partner into an existing partnership does not have personal liability under Section 3.04 for an obligation of the partnership that:

(1) arose before the partner's admission to the partnership;

(2) relates to an action taken or omissions occurring before the partner's

admission to the partnership; or

(3) arises before or after the partner's admission under a contract or commitment entered into before the partner's admission to the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.305. REMEDY. An action may be brought against a partnership and any or all of the partners in the same action or in separate actions. (TRPA 3.05(b).)

Source Law

(b) Action Against Partnership and Partners. An action may be brought against a partnership and any or all of the partners in the same action or in separate actions.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.306. ENFORCEMENT OF REMEDY. (a) A judgment against a partnership is not by itself a judgment against a partner. A judgment may be entered against a partner who has been served with process in a suit against the partnership.

(b) Except as provided by Subsection (c), a creditor may proceed against one or more partners or the property of the partners to satisfy a judgment based on a claim against the partnership only if a judgment:

- (1) is also obtained against the partner; and
- (2) based on the same claim:

- (A) is obtained against the partnership;
- (B) has not been reversed or vacated; and
- (C) remains unsatisfied for 90 days after:
 - (i) the date on which the judgment is

entered; or

(ii) the date on which the stay expires, if the judgment is contested by appropriate proceedings and execution on the judgment is stayed.

(c) Subsection (b) does not prohibit a creditor from proceeding directly against one or more partners or the property of the partners without first seeking satisfaction from partnership property if:

- (1) the partnership is a debtor in bankruptcy;
- (2) the creditor and the partnership agreed that the creditor is not required to comply with Subsection (b);
- (3) a court orders otherwise, based on a finding that

partnership property subject to execution in the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (b) is excessively burdensome; or

(4) liability is imposed on the partner by law independently of the person's status as a partner.

(d) This section does not limit the effect of Section 152.801 with respect to a limited liability partnership. (TRPA 3.05(c), (d), (e), (f).)

Source Law

(c) Judgment Against Partner. A judgment against a partnership is not by itself a judgment against a partner, but a judgment may be entered against a partner who has been served with process in a suit against the partnership.

(d) Limitation on Creditor's Pursuit of Partner's Property. Except as provided by Subsection (e), a creditor may proceed against one or more partners or their property to satisfy a judgment based on a claim that could have been successfully asserted against the partnership only if:

(1) a judgment is also obtained against the partner; and

(2) a judgment based on the same claim is obtained against the partnership that:

(A) has not been reversed or vacated; and

(B) remains unsatisfied for 90 days after:

(i) the date of entry of the judgment; or

(ii) the date of expiration or termination of the stay, if the judgment is contested by appropriate proceedings and execution on the judgment has been stayed.

(e) Creditor's Direct Pursuit of Partner's Property. Subsection (d) does not prohibit a creditor from proceeding directly against one or more partners or their property without first seeking satisfaction from partnership property if:

(1) the partnership is a debtor in bankruptcy;

(2) the creditor and the

partnership agreed that the creditor is not required to comply with Subsection (d);

(3) a court orders otherwise, based on a finding that partnership property subject to execution within the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (d) is excessively burdensome; or

(4) liability is imposed on the partner by law independently of the person's status as a partner.

(f) Registered Limited Liability Partnership. This section does not limit the effect of Section 3.08(a) in the case of a registered limited liability partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.307. EXTENSION OF CREDIT IN RELIANCE ON FALSE REPRESENTATION. (a) The rights of a person extending credit in reliance on a representation described by Section 152.054 are determined by applicable law other than this chapter and the other partnership provisions, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(b) The rights and duties of a person held liable under Subsection (a) are also determined by law other than the law described by Subsection (a). (TRPA 3.06(c), (d).)

Source Law

(c) Creditor's Rights Governed by Other Law. The rights of a person extending credit in reliance on a representation described by Subsections (a) or (b) are determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(d) Legal Status of Person Making Misrepresentation. The rights and duties of a person held liable under Subsection (c) are also determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

Revisor's Note

No substantive change is intended.

[Sections 152.308-152.400 reserved for expansion]

SUBCHAPTER F. TRANSFER OF PARTNERSHIP INTERESTS

Revised Law

Sec. 152.401. TRANSFER OF PARTNERSHIP INTEREST. A partner may transfer all or part of the partner's partnership interest. (TRPA 5.03(a) (part).)

Source Law

(a) Act of Transfer. A transfer of a partner's partnership interest:

(1) is permissible, in whole or in part;

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.402. GENERAL EFFECT OF TRANSFER. A transfer of all or part of a partner's partnership interest:

(1) is not an event of withdrawal;

(2) does not by itself cause a winding up of the partnership business; and

(3) against the other partners or the partnership, does not entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business. (TRPA 5.03(a) (part).)

Source Law

(a) Act of Transfer. A transfer of a partner's partnership interest:

. . .

(2) is not an event of withdrawal;

(3) does not by itself cause a winding up of the partnership business; and

(4) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.403. EFFECT OF TRANSFER ON TRANSFEROR. After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred. (TRPA 5.03(b) (part).)

Source Law

(b) Basic Rights of Transferee. . . .
After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred. Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.404. RIGHTS AND DUTIES OF TRANSFEREE. (a) A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled.

(b) If an event requires a winding up of partnership business under Subchapter I, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor.

(c) Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer.

(d) For a proper purpose the transferee may require reasonable information or an account of a partnership transaction and make reasonable inspection of the partnership books. In a winding up of partnership business, a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(e) Until receipt of notice of a transfer, a partnership is not required to give effect to a transferee's rights under this section and Sections 152.401-152.403. (TRPA 5.03(b) (part), (c), (d).)

Source Law

(b) Basic Rights of Transferee. A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled. . . . Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer. For a proper purpose the transferee may require reasonable information or an account of partnership transactions and make reasonable inspection of the partnership

books.

(c) Rights of Transferee on Winding Up. If an event requires a winding up of partnership business under Section 8.01, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor. In a winding up a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(d) Notice to Partnership. Until receipt of notice of a transfer, a partnership does not have a duty to give effect to a transferee's rights under this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.405. POWER TO EFFECT TRANSFER OR GRANT OF SECURITY INTEREST. A partnership is not required to give effect to a transfer prohibited by a partnership agreement. (TRPA 5.03(e).)

Source Law

(e) No Effect if Prohibited. A partnership does not have a duty to give effect to a transfer, assignment, or grant of a security interest prohibited by a partnership agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.406. EFFECT OF DEATH OR DIVORCE ON PARTNERSHIP INTEREST. (a) For purposes of this code:

(1) on the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, is a transferee of the partnership interest from the partner;

(2) on the death of a partner, the partner's surviving spouse, if any, and an heir, legatee, or personal representative of the partner, to the extent of their respective partnership interest, is a transferee of the partnership interest from the partner; and

(3) on the death of a partner's spouse, an heir, legatee, or personal representative of the spouse, to the extent of their respective partnership interest, is a transferee of the partnership interest from the partner.

(b) An event of the type described by Section 152.501

occurring with respect to a partner's spouse is not an event of withdrawal.

(c) This chapter does not impair an agreement for the purchase or sale of a partnership interest at any time, including the death of an owner of the partnership interest. (TRPA 5.04.)

Source Law

5.04. (a) Divorce. On the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, shall be regarded for purposes of this Act as a transferee of the partnership interest from the partner.

(b) Death of Partner. On the death of a partner, the partner's surviving spouse, if any, and the partner's heirs, legatees, or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interests from the partner.

(c) Death of Partner's Spouse. On the death of a partner's spouse, the spouse's heirs, legatees or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interest from the partner.

(d) Event Involving Partner's Spouse not Withdrawal. An event of the type described in Section 6.01 occurring with respect to a partner's spouse is not an event of withdrawal.

(e) No Impairment of Purchase Rights. This Act does not impair an agreement for the purchase or sale of a partnership interest at the time of death of the owner of the partnership interest or at any other time.

Revisor's Note

No substantive change is intended.

[Sections 152.407-152.500 reserved for expansion]

SUBCHAPTER G. WITHDRAWAL OF PARTNER

Revised Law

Sec. 152.501. EVENTS OF WITHDRAWAL. (a) A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) An event of withdrawal of a partner occurs on:

(1) receipt by the partnership of notice of the

partner's express will to withdraw as a partner on:

(A) the date on which the notice is received; or

(B) a later date specified by the notice;

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided by the partnership agreement;

(4) the partner's expulsion by vote of a majority-in-interest of the other partners if:

(A) it is unlawful to carry on the partnership business with that partner;

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) not later than the 90th day after the date on which the partnership notifies an entity partner, other than a nonfiling entity or foreign nonfiling entity partner, that it will be expelled because it has filed a certificate of termination or the equivalent, its existence has been involuntarily terminated or its charter has been revoked, or its right to conduct business has been terminated or suspended by the jurisdiction of its formation, if the certificate of termination or the equivalent is not revoked or its existence, charter, or right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a nonfiling entity or foreign nonfiling entity that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because the partner:

(A) engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) wilfully or persistently committed a material breach of:

(i) the partnership agreement; or

(ii) a duty owed to the partnership or the other partners under Sections 152.204-152.206; or

(C) engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner's:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of a creditor;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) failing, not later than the 90th day after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or not later than the 90th day after the date of expiration of a stay, failing to have the appointment vacated;

(7) if a partner is an individual:

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

(C) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) termination of a partner's existence;

(9) if a partner has transferred all of the partner's partnership interest, redemption of the transferee's interest under Section 152.611;

(10) an agreement to continue the partnership under Section 11.057(b) if the partnership has received a notice from the partner under Section 11.057(a)(6) requesting that the partnership be wound up; or

(11) a conversion of the partnership if the partner:

(A) did not consent to the conversion; and

(B) failed to notify the partnership in writing of the partner's desire not to withdraw within 60 days after the later of:

(i) the effective date of the conversion; or

(ii) the date the partner receives actual notice of the conversion.

(c) A withdrawal of a partner under the circumstances described in Subsection (b)(11) is effective immediately before the effective date of the conversion and is not considered a wrongful withdrawal under Section 152.503. (TRPA 6.01.)

Source Law

6.01. (a) No Longer a Partner. A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) Event of Withdrawal. An event of withdrawal of a partner occurs on:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner on the date of receipt of the notice or on a later date specified in

the notice;

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided in the partnership agreement;

(4) the partner's expulsion by the vote of a majority-in-interest of the other partners if:

(A) it is unlawful to carry on the partnership business with that partner;

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) within 90 days after the date the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution is not revoked or its charter or its right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a partnership that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because:

(A) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 4.04; or

(C) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to

carry on the business in partnership with that partner;

(6) the partner:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of creditors;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the date of expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

(C) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) termination of a partner's existence;

(9) in the case of a partner that has transferred all of the partner's partnership interest, redemption of the transferee's interest under Sections 7.01(n)-(r);

(10) an agreement to continue the partnership under Section 8.01(g) if the partnership has received a notice from the partner under Section 8.01(g) requesting that the partnership be wound up; or

(11) a conversion of the partnership if the partner:

(A) did not consent to the conversion; and

(B) failed to notify the

partnership in writing of the partner's desire not to withdraw within 60 days after the later of:

(i) the effective date of the conversion; or

(ii) the date the partner receives actual notice of the conversion.

(c) Withdrawal on Conversion. A withdrawal of a partner under the circumstances described in Subsection (b)(11) of this section is effective immediately before the effective date of the conversion and is not considered a wrongful withdrawal.

Revisor's Note

Section 152.501 of the revised law lists events the occurrence of which constitutes an event of withdrawal and is the corresponding provision to Section 6.01, Texas Revised Partnership Act. Several changes should be noted:

(1) Section 152.501(b)(4)(C) provides that an event of withdrawal occurs on a partner's expulsion by a vote of a majority-in-interest of the other partners if, not later than 90 days after the date on which the partnership notifies an entity partner (other than a nonfiling entity or a foreign nonfiling entity partner) that it will be expelled because it filed a certificate of termination or the equivalent, its existence has been involuntarily terminated or its charter has been revoked, or its right to conduct business has been terminated or suspended, the certificate of termination or equivalent is not revoked or its existence, charter, or right to conduct business is not reinstated. Section 152.501(b)(4)(C) is broader than Section 6.01(b)(4)(C), Texas Revised Partnership Act, in that that section referenced only a "corporate partner." As noted above, Section 152.501(b)(4)(C) references an entity partner other than a nonfiling entity or foreign nonfiling entity partner; as defined, a filing entity includes a corporation, limited partnership, limited liability

company, professional association,
cooperative, or real estate investment trust.

(2) Section 152.501(b)(4)(D) provides that an event of withdrawal occurs when an event requiring a winding up has occurred with respect to a nonfiling entity or a foreign nonfiling entity that is a partner. This section is broader than Section 6.01(b)(4)(D), Texas Revised Partnership Act, which references an event of withdrawal occurring with respect to a "partnership" that is a partner.

Revised Law

Sec. 152.502. EFFECT OF EVENT OF WITHDRAWAL ON PARTNERSHIP AND OTHER PARTNERS. A partnership continues after an event of withdrawal. The event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 152.503-152.506 and Subchapter H. (TRPA 2.06(a).)

Source Law

(a) Continuation of Partnership After Event of Withdrawal. A partnership continues after an event of withdrawal, but the event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 6.02, 7.01, 7.02, and 7.03.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.503. WRONGFUL WITHDRAWAL; LIABILITY. (a) At any time before the occurrence of an event requiring a winding up of partnership business, a partner may withdraw from the partnership and cease to be a partner as provided by Section 152.501.

(b) A partner's withdrawal is wrongful only if:

(1) the withdrawal breaches an express provision of the partnership agreement;

(2) in the case of a partnership for a definite term or particular undertaking or for which the partnership agreement provides for winding up on a specified event, before the expiration of the term, the completion of the undertaking, or the occurrence of the event, as appropriate:

(A) the partner withdraws by express will;

(B) the partner withdraws by becoming a debtor in bankruptcy; or

(C) in the case of a partner that is not an

individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully dissolved or terminated; or

(3) the partner is expelled by judicial decree under Section 152.501(b)(5).

(c) In addition to other liability of the partner to the partnership or to the other partners, a wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal. (TRPA 6.02.)

Source Law

6.02. (a) Power to Withdraw. A partner at any time before the occurrence of an event requiring a winding up has the power to withdraw from the partnership and cease to be a partner as provided by Section 6.01.

(b) Wrongful Withdrawal. A partner's withdrawal is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement;

(2) in the case of a partnership for a definite term or particular undertaking or for which the partnership agreement provides for winding up on a specified event, before the expiration of the term, the completion of the undertaking, or the occurrence of the event:

(A) the partner withdraws by express will;

(B) the partner withdraws by becoming a debtor in bankruptcy; or

(C) in the case of a partner that is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully dissolved or terminated; or

(3) the partner is expelled by judicial decree under Section 6.01(b)(5).

(c) Liability for Damages. A wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal, in addition to other liability of the partner to the partnership or to the other partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.504. WITHDRAWN PARTNER'S POWER TO BIND PARTNERSHIP. (a) The action of a withdrawn partner occurring not later than the first anniversary of the date of the person's withdrawal binds the partnership if the transaction would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after the withdrawal date and for which the partnership is liable under Subsection (a). (TRPA 7.02.)

Source Law

7.02. (a) Power to Bind for One Year. The action of a withdrawn partner within one year after the date of the person's withdrawal binds the partnership if the transaction is one that would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) Withdrawn Partner's Liability for Loss. A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after withdrawal and for which the partnership is liable under Subsection (a).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.505. EFFECT OF WITHDRAWAL ON PARTNER'S EXISTING LIABILITY. (a) Withdrawal of a partner does not by itself

discharge the partner's liability for an obligation of the partnership incurred before the date of withdrawal.

(b) The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before the date of withdrawal.

(c) A withdrawn partner is discharged from liability incurred before the date of withdrawal by an agreement to that effect between the partner and a partnership creditor.

(d) If a creditor of a partnership has notice of a partner's withdrawal and without the consent of the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the date of withdrawal, the withdrawn partner is discharged from the obligation. (TRPA 7.03(a), (b), (c), (d).)

Source Law

(a) Withdrawal Does Not Discharge Liability. Withdrawal of a partner does not of itself discharge the partner's liability for an obligation of the partnership incurred before withdrawal.

(b) Liability of Deceased Partner's Estate. The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before withdrawal.

(c) Discharge of Withdrawn Partner by Agreement of Creditor. A withdrawn partner is discharged from liability incurred before the withdrawal by an agreement to that effect between the partner and a partnership creditor.

(d) Material Alteration of Obligation Without Consent Discharges Withdrawn Partner. If a creditor of a partnership has notice of a partner's withdrawal and without the consent of the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the withdrawal, the withdrawn partner is discharged from the obligation.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.506. LIABILITY OF WITHDRAWN PARTNER TO THIRD PARTY. A person who withdraws as a partner in a circumstance that is not an event requiring a winding up of partnership business under Section 11.051 or 11.057 is liable to another party as a partner in a transaction entered into by the partnership or a surviving partnership under Section 10.001 not later than the second anniversary of the date of the partner's withdrawal only if the other party to the transaction:

(1) does not have notice of the partner's withdrawal; and

(2) reasonably believed that the withdrawn partner was a partner at the time of the transaction. (TRPA 7.03(e).)

Source Law

(e) Liability of Withdrawn Partner to Creditor. A person who withdraws as a partner in a circumstance that does not constitute an event requiring a winding up under Section 8.01 is liable as a partner to another party in a transaction entered into by the partnership or a surviving partnership under Section 9.02 within two years after the date of the partner's withdrawal only if the other party to the transaction:

(1) does not have notice of the partner's withdrawal; and

(2) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

Revisor's Note

No substantive change is intended.

[Sections 152.507-152.600 reserved for expansion]

SUBCHAPTER H. REDEMPTION OF WITHDRAWING PARTNER'S OR TRANSFEREE'S INTEREST

Revised Law

Sec. 152.601. REDEMPTION IF PARTNERSHIP NOT WOUND UP. The partnership interest of a withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this subchapter if:

(1) the event of withdrawal occurs under Sections 152.501(b)(1)-(9) and an event requiring a winding up of partnership business does not occur before the 61st day after the date of the withdrawal; or

(2) the event of a withdrawal occurs under Section 152.501(b)(10). (TRPA 7.01(a).)

Source Law

(a) Redemption. If an event of withdrawal occurs under Sections 6.01(b)(1)-(9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b)(10) or Section 6.01(b)(11), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.602. REDEMPTION PRICE. (a) Except as provided by Subsection (b), the redemption price of a withdrawn partner's partnership interest is the fair value of the interest on the date of withdrawal.

(b) The redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is the lesser of:

(1) the fair value of the withdrawn partner's partnership interest on the date of withdrawal; or

(2) the amount that the withdrawn partner would have received if an event requiring a winding up of partnership business had occurred at the time of the partner's withdrawal.

(c) Interest is payable on the amount owed under this section. (TRPA 7.01(b).)

Source Law

(b) Redemption Price. (1) The redemption price of a withdrawn partner's partnership interest is the fair value of the interest as of the date of withdrawal, except that the redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is the lesser of:

(A) the fair value of the withdrawn partner's partnership interest as

of the date of withdrawal; or

(B) the amount that the withdrawn partner would have received if an event requiring a winding up had occurred at the time of the partner's withdrawal.

(2) Interest is payable on the amount owed under this subsection.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.603. CONTRIBUTION OBLIGATION. If a wrongfully withdrawing partner would have been required to make contributions to the partnership under Section 152.707 or 152.708 if an event requiring winding up of the partnership business had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions to the partnership in that amount and pay interest on the amount owed. (TRPA 7.01(c).)

Source Law

(c) Contributions from Wrongfully Withdrawing Partner. If a wrongfully withdrawing partner would have been liable to make contributions to the partnership under Section 8.06(b) or (c) if an event requiring winding up had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions in that amount to the partnership, plus interest on the amount owed.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.604. SETOFF FOR CERTAIN DAMAGES. The partnership may set off against the redemption price payable to the withdrawn partner the damages for wrongful withdrawal under Section 152.503(b) and all other amounts owed by the withdrawn partner to the partnership, whether currently due, including interest. (TRPA 7.01(d).)

Source Law

(d) Setoff. The partnership may set off the damages for wrongful withdrawal under Section 6.02(b) and all other amounts owed by the withdrawn partner to the partnership,

whether currently due, including interest, against the redemption price payable to the withdrawn partner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.605. ACCRUAL OF INTEREST. Interest payable under Sections 152.602-152.604 accrues from the date of the withdrawal to the date of payment. (TRPA 7.01(e).)

Source Law

(e) Interest. Interest owed under Subsection (b), (c), or (d) accrues from the date of the withdrawal to the date of payment.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.606. INDEMNIFICATION FOR CERTAIN LIABILITY. (a) A partnership shall indemnify a withdrawn partner against a partnership liability incurred before the date of withdrawal, except for a liability:

- (1) that is unknown to the partnership at the time; or
- (2) incurred by an act of the withdrawn partner under Section 152.504.

(b) For purposes of this section, a liability is unknown to the partnership if it is not known to a partner other than the withdrawn partner. (TRPA 7.01(f).)

Source Law

(f) Indemnity. (1) A partnership shall indemnify a withdrawn partner against a partnership liability incurred before the withdrawal except a liability:

- (A) then unknown to the partnership; or
- (B) incurred by an act of the withdrawn partner under Section 7.02.

(2) For purposes of this subsection, a liability not known to a partner other than the withdrawn partner is not known to the partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.607. DEMAND OR PAYMENT OF ESTIMATED REDEMPTION.

(a) If a deferred payment is not authorized under Section 152.608 and an agreement on the redemption price of a withdrawn partner's interest is not reached before the 121st day after the date a written demand for payment is made by either party, not later than the 30th day after the expiration of the period, the partnership shall:

(1) pay to the withdrawn partner in cash the amount the partnership estimates to be the redemption price and any accrued interest, reduced by any setoffs and accrued interest under Section 152.604; or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner to the partnership, minus any amount owed to the withdrawn partner by the partnership.

(b) If a deferred payment is authorized under Section 152.608 or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may offer in writing to pay, or deliver a written statement of demand for, the amount it estimates to be the net amount owed, stating the amount and other terms of the obligation.

(c) On request of the other party, the payment, tender, offer, or demand required or allowed by Subsection (a) or (b) must be accompanied or followed promptly by:

(1) if payment, tender, offer, or demand is made or delivered by the partnership, a statement of partnership property and liabilities from the date of the partner's withdrawal and the most recent available partnership balance sheet and income statement, if any; and

(2) an explanation of the computation of the estimated payment obligation.

(d) The terms of a payment, tender, offer, or demand under Subsection (a) or (b) govern a redemption if:

(1) accompanied by written notice that:

(A) the payment or tendered amount, if made, fully satisfies a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Section 152.603 or 152.604, or other terms of the redemption obligation must be commenced not later than the first anniversary of the later of:

(i) the date on which the written notice is given; or

(ii) the date on which the information required by Subsection (c) is delivered; and

(2) the party receiving the payment, tender, offer, or demand does not commence an action in the period described by

Subdivision (1)(B). (TRPA 7.01(g), (h), (i), (j).)

Source Law

(g) Tender of Redemption Price. If a deferred payment is not authorized under Subsection (k) and an agreement on the redemption price of a withdrawn partner's interest is not reached within 120 days after the date of a written demand for payment by either party, within 30 days after the expiration of the 120-day period the partnership shall:

(1) pay in cash to the withdrawn partner the amount the partnership estimates to be the redemption price plus accrued interest, reduced by any setoffs and accrued interest under Subsection (d); or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner, net of amounts owed to the partner, to the partnership.

(h) Written Offer to Pay or Demand for Payment. If a deferred payment is authorized under Subsection (k) or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may tender a written offer to pay or deliver a written statement of demand for the amount that it estimates to be the net amount owed to it, stating the amount and other terms and conditions of the obligation.

(i) Explanatory Statement Accompanying or Following Tender. On request of the other party, the payment, tender, or demand required or allowed by Subsection (g) or (h) must be accompanied or followed promptly by:

(1) a statement of partnership property and liabilities as of the date of the partner's withdrawal and the latest available partnership balance sheet and income statement, if any, if payment, tender, or demand is made or delivered by the partnership; and

(2) an explanation of the computation of the estimated payment obligation.

(j) Tender in Full Satisfaction. The terms of a payment or tender under Subsection

(g) or (h) govern a redemption if:

(1) the payment or tender is accompanied by written notice that:

(A) the payment or tendered amount, if made, is in full satisfaction of a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Subsection (c) or (d), or other terms of the redemption obligation must be commenced within one year after the later of:

(i) the date the written notice is given; or

(ii) the date of delivery of the information required by Subsection (i); and

(2) the party receiving the payment or tender does not commence an action within that one-year period.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.608. DEFERRED PAYMENT ON WRONGFUL WITHDRAWAL. (a) A partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is not entitled to receive any portion of the redemption price until the expiration of the term, the completion of the undertaking, or the occurrence of the specified event, as appropriate, unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership.

(b) A deferred payment accrues interest.

(c) The withdrawn partner may seek to demonstrate to the satisfaction of the court that security for a deferred payment is appropriate. (TRPA 7.01(k).)

Source Law

(k) Deferral of Payment to Wrongfully Withdrawing Partner. A partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is

not entitled to receive any portion of the redemption price until the expiration of the term, the completion of the undertaking, or the occurrence of the specified event unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership. A deferred payment bears interest. The withdrawn partner may seek to demonstrate to the satisfaction of the court that security for a deferred payment is appropriate.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.609. ACTION TO DETERMINE TERMS OF REDEMPTION. (a) A withdrawn partner or the partnership may maintain an action against the other party under Section 152.211 to determine:

(1) the terms of redemption of that partner's interest, including a contribution obligation or setoff under Section 152.603 or 152.604; or

(2) other terms of the redemption obligations of either party.

(b) The action must be commenced not later than the first anniversary of the later of:

(1) the date of delivery of information required by Section 152.607(c); or

(2) the date written notice is given under Section 152.607(d).

(c) The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Section 152.603 or 152.604, and accrued interest and shall enter judgment for an additional payment or refund.

(d) If deferred payment is authorized under Section 152.608, the court shall also determine the security for payment if requested to consider whether security is appropriate.

(e) If the court finds that a party failed to tender payment or make an offer to pay or to comply with the requirements of Section 152.607(c) or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess damages against the party, including, if appropriate, in an amount the court finds equitable:

(1) a share of the profits of the continuing business;

(2) reasonable attorney's fees; and

(3) fees and expenses of appraisers or other experts for a party to the action. (TRPA 7.01(1).)

Source Law

(1) Action to Determine Redemption Terms. A withdrawn partner or the partnership may maintain an action against the other party under Section 4.06 to determine the terms of redemption of that partner's interest, including a contribution obligation or setoff under Subsection (c) or (d) or other terms of the redemption obligations of either party. The action must be commenced within one year after the later of the date of delivery of information required by Subsection (i) or the date written notice is given under Subsection (j). The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Subsection (c) or (d), and accrued interest and enter judgment for an additional payment or refund. If deferred payment is authorized under Subsection (k), the court shall also determine the security for payment if requested to consider whether security is appropriate. If the court finds that a party acted arbitrarily, vexatiously, or not in good faith, including failure to tender payment or make an offer to pay or to comply with the requirements of Subsection (i), the court may assess damages against the party, including if appropriate a share of the profits of the continuing business, reasonable attorney's fees, and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.610. DEFERRED PAYMENT ON WINDING UP PARTNERSHIP. If a partner withdraws under Section 152.501 and not later than the 60th day after the date of withdrawal an event requiring winding up occurs under Section 11.051 or 11.057:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is

the amount the withdrawn partner would have received or contributed if the event requiring winding up had occurred at the time of the partner's withdrawal. (TRPA 7.01(m).)

Source Law

(m) Deferral of Payment on Occurrence of Event Requiring Winding Up. If a partner withdraws under Section 6.01 and an event occurs within 60 days of the date of withdrawal that requires a winding up of the partnership under Section 8.01:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership first makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is the amount the withdrawn partner would have received or contributed if the event requiring a winding up had occurred at the time of the partner's withdrawal.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.611. REDEMPTION OF TRANSFEREE'S PARTNERSHIP INTEREST. (a) A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership was for a definite term not yet expired;

(B) the partnership was for a particular undertaking not yet completed; or

(C) the partnership agreement provided for winding up of the partnership business on a specified event that had not yet occurred;

(2) the definite term of the partnership has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(b) If an agreement for the redemption price of a transferee's interest is not reached before the 121st day after the date a written demand for redemption is made, the partnership must pay to the transferee in cash the amount the partnership estimates to be the redemption price and any accrued interest from the date of demand not later than the 30th day after the

expiration of the period.

(c) On request of the transferee, the payment required by Subsection (b) must be accompanied or followed by:

(1) a statement of partnership property and liabilities from the date of the demand for redemption;

(2) the most recent available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(d) If the payment required by Subsection (b) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee, not later than the first anniversary of the written notice, commences an action to determine the redemption price. (TRPA 7.01(n), (o), (p), (q).)

Source Law

(n) Obligation to Redeem Transferee. A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership was for a definite term not then expired or a particular undertaking not then completed; or

(B) the partnership agreement provided for winding up on a specified event that has not yet occurred;

(2) the definite term has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(o) Payment to Transferee. If an agreement for the redemption price of a transferee's interest is not reached within 120 days after the date of a written demand for redemption, within 30 days after the expiration of the 120-day period the partnership must pay in cash to the transferee the amount the partnership estimates to be the redemption price, plus accrued interest from the date of demand.

(p) Information to Transferee. On

request of the transferee, the payment required by Subsection (o) must be accompanied or followed by:

(1) a statement of partnership property and liabilities as of the date of the demand for redemption;

(2) the latest available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(q) Price for Transferee. If payment required by Subsection (o) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee within one year after the date of the written notice commences an action to determine the redemption price.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.612. ACTION TO DETERMINE TRANSFEREE'S REDEMPTION PRICE. (a) A transferee may maintain an action against a partnership to determine the redemption price of the transferee's interest.

(b) The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund.

(c) If the court finds that the partnership failed to make payment or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess against the partnership in an amount the court finds equitable:

(1) reasonable attorney's fees; and

(2) fees and expenses of appraisers or other experts for a party to the action.

(d) The redemption of a transferee's interest under Sections 152.611(a) and (b) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to defer redemption will cause undue hardship to the partnership business. (TRPA 7.01(r), (s).)

Source Law

(r) Suit by Transferee. A transferee

may maintain an action against a partnership to determine the redemption price of the transferee's interest. The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund. If the court finds that the partnership acted arbitrarily, vexatiously, or not in good faith, including failure to make payment, the court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against the partnership.

(s) Deferral of Transferee Redemption. The redemption of a transferee's interest under Subsections (n) and (o) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to defer redemption will cause undue hardship to the business of the partnership.

Revisor's Note

No substantive change is intended.

[Sections 152.613-152.700 reserved for expansion]

SUBCHAPTER I. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Revised Law

Sec. 152.701. EFFECT OF EVENT REQUIRING WINDING UP. On the occurrence of an event requiring winding up of a partnership business under Section 11.051 or 11.057:

(1) the partnership continues until the winding up of its business is completed, at which time the partnership is terminated; and

(2) the relationship among the partners is changed as provided by this subchapter. (TRPA 2.06(b), 8.02.)

Source Law

[2.06]

(b) Effect of Occurrence of Event Requiring a Winding Up. On the occurrence of an event requiring a winding up of a partnership under Section 8.01, the partnership continues as provided by Section 8.03, but the relationship among the partners is changed as provided by Sections 8.02, 8.03, 8.04, 8.05, and 8.06.

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.

Revised Law

Sec. 152.702. PERSONS ELIGIBLE TO WIND UP PARTNERSHIP BUSINESS. (a) After the occurrence of an event requiring a winding up of a partnership business, the partnership business may be wound up by:

- (1) the partners who have not withdrawn;
- (2) the legal representative of the last surviving partner; or
- (3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 152.608, 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. (TRPA 8.03(a).)

Source Law

(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.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.703. RIGHTS AND DUTIES OF PERSON WINDING UP PARTNERSHIP BUSINESS. (a) 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 take the actions specified in Sections 11.052, 11.053, and 11.055.

(b) Section 11.052(a)(2) shall not be applicable to a partnership. (TRPA 8.03(b).)

Source Law

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

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

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

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

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

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

(6) perform any other necessary act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.704. BINDING EFFECT OF PARTNER'S ACTION AFTER EVENT REQUIRING WINDING UP. After the occurrence of an event requiring winding up of the partnership business, a partnership is bound by a partner's act that:

(1) is appropriate for winding up; or

(2) would bind the partnership under Sections 152.301 and 152.302 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred. (TRPA 8.05.)

Source Law

8.05. After the occurrence of an event requiring winding up, a partnership is bound by a partner's act that:

(1) is appropriate for winding up the partnership business; or

(2) would bind the partnership under Section 3.02 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.705. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER EVENT REQUIRING WINDING UP. (a) Except as provided by Subsection (b), after the occurrence of an event requiring winding up of the partnership business, the losses with respect to which a partner must contribute under Section 152.708(a) include losses from a liability incurred under Section 152.704.

(b) A partner who incurs, with notice that an event requiring a winding up of the partnership business has occurred, a partnership liability under Section 152.704(2) by an act that is not appropriate for winding up is liable to the partnership for a loss caused to the partnership arising from that liability. (TRPA 8.04.)

Source Law

8.04. (a) Liability of All Partners for Losses. Except as provided by Subsection (b), after occurrence of an event requiring winding up the losses with respect to which a partner must contribute under Section 8.06(c) include losses from any liabilities incurred under Section 8.05.

(b) Individual Liability of Acting Partner for Losses. A partner who, with notice that an event requiring a winding up has occurred, incurs a partnership liability under Section 8.05(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for a loss caused to the partnership arising from that liability.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.706. DISPOSITION OF ASSETS. (a) In winding up the partnership business, the property of the partnership, including

any required contributions of the partners under Sections 152.707 and 152.708, shall be applied to discharge its obligations to creditors, including partners who are creditors other than in the partners' capacities as partners.

(b) A surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Section 152.707. (TRPA 8.06(a).)

Source Law

(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

No substantive change is intended.

Revised Law

Sec. 152.707. SETTLEMENT OF ACCOUNTS. (a) Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business.

(b) In settling accounts among the partners, the partnership interest of a withdrawn partner that is not redeemed under Subchapter H is credited with a share of any profits for the period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period.

(c) The profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts.

(d) The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. Except as provided by Section 152.304(b) or 152.801, a partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account. (TRPA 8.06(b).)

Source Law

(b) Settlement of Accounts Among Partners. Each partner is entitled to a

settlement of all partnership accounts on winding up the partnership business. In settling accounts among the partners, the partnership interest of a withdrawn partner that is not redeemed under Section 7.01 is credited with a share of any profits for the period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period, and the profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. Except as provided by Section 3.07 or 3.08(a), a partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.708. CONTRIBUTIONS TO DISCHARGE OBLIGATIONS. (a) Except as provided by Sections 152.304(b) and 152.801, to the extent not taken into account in settling the accounts among partners under Section 152.707:

(1) each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners;

(2) if a partner fails to contribute, the other partners shall contribute the additional amount necessary to satisfy the partnership obligations in the proportions in which the partners share partnership losses; and

(3) a partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

(b) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(c) The following persons may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership:

- (1) the partnership;
- (2) an assignee for the benefit of creditors of a partnership or a partner; or
- (3) a person appointed by a court to represent creditors of a partnership or a partner. (TRPA 8.06(c), (d), (e).)

Source Law

(c) Contribution to Satisfy Obligations. Except as provided by Section 3.07 or 3.08(a), to the extent not taken into account in settling the accounts among partners under Subsection (b):

(1) each partner must contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners;

(2) if a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations; and

(3) a partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

(d) Liability of Deceased Partner's Estate. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(e) Enforcement of Obligation of Estate of Deceased Partner. The partnership, an assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.709. CONTINUATION OF PARTNERSHIP. (a) If all the partners in a partnership for a definite term or for a particular undertaking or for which the partnership agreement provides for winding up on a specified event agree to continue the partnership business notwithstanding the expiration of the term, the completion of the undertaking, or the occurrence of the event, as appropriate, 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.

(b) A continuation of the business for 90 days by the partners or those who habitually acted in the business during the term or undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie evidence of agreement by all partners to continue the business under Subsection (a).

(c) The continuation of the business by the other partners or by those who habitually acted in the business before the notice under Section 11.057(b), other than the partner giving the notice, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership under Section 11.057(b).

(d) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of all the partners as specified in Section 11.057(a)(2) or (3), prior to completion of the winding up process, all the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(e) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of a majority-in-interest of the partners as specified in Section 11.057(a)(1), prior to completion of the winding up process, a majority-in-interest of the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership. (TRPA 4.07, 8.01(g).)

Source Law

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.

(b) Continuation by Action. A continuation of the business for 90 days by the partners or those who habitually acted in the business during the term or undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie evidence of agreement by all partners to continue the business.

[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. The continuation of the business by the other partners or by those who habitually acted in the business before the notice, other than the partner giving the notice, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership.

Revisor's Note

No substantive change is intended. Subsections (d) and (e) of the revised law clarify that the partners may elect to revoke

a prior voluntary decision to wind up, which was implicit in the source law. Subsections (d) and (e) specify what approvals are needed to revoke.

Revised Law

Sec. 152.710. REINSTATEMENT. To approve a reinstatement of a partnership under Section 11.202, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the partnership. (New.)

Revisor's Note

The revised law is added to specify what approval is needed to reinstate a partnership under Section 11.202 after it has completed the winding up of its business and affairs.

[Sections 152.711-152.800 reserved for expansion]

SUBCHAPTER J. LIMITED LIABILITY PARTNERSHIPS

Revised Law

Sec. 152.801. LIABILITY OF PARTNER. (a) Except as provided by Subsection (b), a partner in a limited liability partnership is not personally liable, directly or indirectly, by contribution, indemnity, or otherwise, for a debt or obligation of the partnership incurred while the partnership is a limited liability partnership.

(b) A partner in a limited liability partnership is not personally liable for a debt or obligation of the partnership arising from an error, omission, negligence, incompetence, or malfeasance committed by another partner or representative of the partnership while the partnership is a limited liability partnership and in the course of the partnership business unless the first partner:

(1) was supervising or directing the other partner or representative when the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative;

(2) was directly involved in the specific activity in which the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative; or

(3) had notice or knowledge of the error, omission, negligence, incompetence, or malfeasance by the other partner or representative at the time of the occurrence and then failed to take reasonable action to prevent or cure the error, omission, negligence, incompetence, or malfeasance.

(c) Sections 2.101(1), 152.305, and 152.306 do not limit the effect of Subsection (a) in a limited liability partnership.

(d) In this section, "representative" includes an agent, servant, or employee of a limited liability partnership.

(e) Subsections (a) and (b) do not affect:

(1) the liability of a partnership to pay its debts and obligations from partnership property;

(2) the liability of a partner, if any, imposed by law or contract independently of the partner's status as a partner; or

(3) the manner in which service of citation or other civil process may be served in an action against a partnership.

(f) This section controls over the other parts of this chapter and the other partnership provisions regarding the liability of partners of a limited liability partnership, the chargeability of the partners for the debts and obligations of the partnership, and the obligations of the partners regarding contributions and indemnity. (TRPA 3.08(a).)

Source Law

(a) Liability of Partner. (1) Except as provided in Subsection (a)(2), a partner in a registered limited liability partnership is not individually liable, directly or indirectly, by contribution, indemnity, or otherwise, for debts and obligations of the partnership incurred while the partnership is a registered limited liability partnership.

(2) A partner in a registered limited liability partnership is not individually liable, directly or indirectly, by contribution, indemnity, or otherwise, for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or a representative of the partnership not working under the supervision or direction of the first partner unless the first partner:

(A) was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative; or

(B) had notice or knowledge of the errors, omissions, negligence, incompetence, or malfeasance by the other partner or representative at the time of occurrence and then failed to take reasonable steps to prevent or cure the errors,

omissions, negligence, incompetence, or malfeasance.

(3) Subsections (a)(1) and (a)(2) do not affect:

(A) the liability of a partnership to pay its debts and obligations out of partnership property;

(B) the liability of a partner, if any, imposed by law or contract independently of the partner's status as a partner; or

(C) the manner in which service of citation or other civil process may be served in an action against a partnership.

(4) In this subsection, "representative" includes an agent, servant, or employee of a registered limited liability partnership.

(5) In the case of a registered limited liability partnership, Subsection (a) prevails over the other parts of this Act regarding the liability of partners, their chargeability for the debts and obligations of the partnership, and their obligations regarding contributions and indemnity.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.802. REGISTRATION. (a) In addition to complying with Sections 152.803 and 152.804, a partnership, to become a limited liability partnership, must file an application with the secretary of state in accordance with Chapter 4 and this section. The application must:

(1) set out:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the street address of the partnership's principal office in this state or outside of this state, as applicable; and

(D) the number of partners at the date of application; and

(2) contain a brief statement of the partnership's business.

(b) The application must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a limited liability partnership by the secretary of state on:

(1) the date on which a completed initial or renewal application is filed in accordance with Chapter 4; or

(2) a later date specified in the application.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a limited liability partnership is effective until the first anniversary of the date of registration or a later effective date, unless the application is:

(1) withdrawn or revoked at an earlier time; or

(2) renewed in accordance with Subsection (g).

(f) A registration may be withdrawn by filing a withdrawal notice with the secretary of state in accordance with Chapter 4. A withdrawal notice terminates the status of the partnership as a limited liability partnership from the date on which the notice is filed or a later date specified in the notice, but not later than the expiration date under Subsection (e). A withdrawal notice must:

(1) contain:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the date of registration of the partnership's last application under this subchapter; and

(D) the current street address of the partnership's principal office in this state and outside this state, if applicable; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

(g) An effective registration may be renewed before its expiration by filing an application with the secretary of state in accordance with Chapter 4. A renewal application filed under this subsection continues an effective registration for one year after the date the registration would otherwise expire. The renewal application must contain:

(1) current information required for an initial application; and

(2) the most recent date of registration of the partnership.

(h) The secretary of state may remove from its active records the registration of a partnership the registration of which has:

(1) been withdrawn or revoked; or

(2) expired and not been renewed.

(i) The secretary of state is not responsible for determining whether a partnership is in compliance with the requirements of Section 152.804(a).

(j) A document filed under this subchapter may be amended by filing an application for amendment of registration with the secretary of state in accordance with Chapter 4 and this subsection. The application for amendment must:

(1) contain:

(A) the name of the partnership;
(B) the tax identification number of the partnership;
(C) the identity of the document being amended;
(D) the date on which the document being amended was filed;
(E) a reference to the part of the document being amended; and
(F) the amendment or correction; and

(2) be signed by:

(A) a majority-in-interest of the partners; or
(B) one or more partners authorized by a majority-in-interest of the partners. (TRPA 3.08(b)(1), (2), (4), (5), (6), (7), (8), (11), (14).)

Source Law

(1) In addition to complying with subsections (c) and (d)(1), to become a registered limited liability partnership, a partnership must file with the secretary of state an application stating:

(A) the name of the partnership;
(B) the federal tax identification number of the partnership;
(C) the street address of the partnership's principal office in this state and outside this state, as applicable;
(D) the number of partners at the date of application; and
(E) in brief, the partnership's business.

(2) The application must be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

(4) A partnership is registered as

a registered limited liability partnership on filing a completed initial or renewal application, in duplicate with the required fee, or on a later date specified in the application. A registration is not affected by later changes in the partners of the partnership.

(5) An initial application filed under this subsection and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subdivision (7).

(6) A registration may be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. A withdrawal notice must include the name of the partnership, the federal tax identification number of the partnership, the date of registration of the partnership's last application under this section, and a current street address of the partnership's principal office in this state and outside this state, if applicable. A withdrawal notice terminates the status of the partnership as a registered limited liability partnership as of the date of filing the notice or a later date specified in the notice, but not later than the expiration date under Subdivision (5).

(7) An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state an application containing current information of the kind required in an initial application and the most recent date of registration of the partnership. The renewal application must be accompanied by a fee of \$200 for each partner on the date of renewal. A renewal application filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

(8) The secretary of state may remove from its active records the

registration of a partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

(11) A document filed under this subsection may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. The articles of amendment must contain the name of the partnership, the tax identification number of the partnership, the identity of the document being amended, the date on which the document being amended was filed, the part of the document being amended, and the amendment or correction. Two copies of the articles of amendment must be filed, accompanied by a fee of \$10 plus, if the amendment increases the number of partners, \$200 for each partner added by amendment of the number of partners.

(14) The secretary of state is not responsible for determining if a partnership is in compliance with the requirements of Subsection (d)(1).

Revisor's Note

No substantive change is intended. The requirement in Section 3.08(b)(7), Texas Revised Partnership Act, that the renewal application for an effective registration be accompanied by a fee of \$200 for each partner is contained in Section 4.158.

Revised Law

Sec. 152.803. NAME. The name of a limited liability partnership must comply with Section 5.063. (TRPA 3.08(c).)

Source Law

(c) Name. A registered limited liability partnership's name must contain the words "registered limited liability partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

Revisor's Note

See Revisor's Note to Section 5.063.

Revised Law

Sec. 152.804. INSURANCE OR FINANCIAL RESPONSIBILITY. (a) A limited liability partnership must:

(1) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kind of error, omission, negligence, incompetence, or malfeasance for which liability is limited by Section 152.801(b); or

(2) provide \$100,000 specifically designated and segregated for the satisfaction of judgments against the partnership for the kind of error, omission, negligence, incompetence, or malfeasance for which liability is limited by Section 152.801(b) by:

(A) deposit of cash, bank certificates of deposit, or United States Treasury obligations in trust or bank escrow;

(B) a bank letter of credit; or

(C) insurance company bond.

(b) If the limited liability partnership is in compliance with Subsection (a), the requirements of this section may not be admissible or be made known to the jury in determining an issue of liability for or extent of:

(1) the debt or obligation in question; or

(2) damages in question.

(c) If compliance with Subsection (a) is disputed:

(1) compliance must be determined separately from the trial or proceeding to determine:

(A) the partnership debt or obligation in question;

(B) the amount of the debt or obligation; or

(C) partner liability for the debt or obligation; and

(2) the burden of proof of compliance is on the person claiming limitation of liability under Section 152.801(b). (TRPA 3.08(d).)

Source Law

(d) Insurance or Financial Responsibility. (1) A registered limited liability partnership must:

(A) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2); or

(B) provide \$100,000 of funds

specifically designated and segregated for the satisfaction of judgments against the partnership based on the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2) by:

(i) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

(ii) a bank letter of credit or insurance company bond.

(2) If the registered limited liability partnership is in compliance with Subdivision (1), the requirements of this subsection shall not be admissible or in any way be made known to the jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

(3) If compliance with Subdivision (1) is disputed:

(A) compliance must be determined separately from the trial or proceeding to determine the partnership debt or obligation in question, its amount, or partner liability for the debt or obligation; and

(B) the burden of proof of compliance is on the person claiming limitation of liability under Subsection (a)(2).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.805. LIMITED PARTNERSHIP. A limited partnership may become a limited liability partnership by complying with applicable provisions of Chapter 153. (TRPA 3.08(e).)

Source Law

(e) Limited Partnership. A limited partnership may become a registered limited liability partnership by complying with applicable provisions of the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

Revisor's Note

No substantive change is intended.

[Sections 152.806-152.900 reserved for expansion]

SUBCHAPTER K. FOREIGN LIMITED LIABILITY PARTNERSHIPS

Revised Law

Sec. 152.901. GENERAL. (a) A foreign limited liability partnership is subject to Section 2.101 with respect to its activities in this state to the same extent as a domestic limited liability partnership.

(b) A foreign limited liability partnership may not be denied registration because of a difference between the laws of the state under which the partnership is formed and the laws of this state. (TRPA 10.01(b), (c).)

Source Law

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the laws of the state under which it is formed and the laws of Texas.

(c) With respect to its activities in Texas, a foreign limited liability partnership is subject to Section 3.01 as if it were a domestic registered limited liability partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.902. NAME. The name of a foreign limited liability partnership must:

(1) satisfy the requirements of the state of formation; and

(2) comply with Section 5.063. (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:

(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";

. . .

Revisor's Note

See Revisor's Note to Section 5.063.

Revised Law

Sec. 152.903. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS. Without excluding other activities that do not constitute transacting business in this state, a foreign limited liability partnership is not considered to be transacting business in this state for purposes of this code because it carries on in this state one or more of the activities listed by Section 9.251. (TRPA 10.04.)

Source Law

10.04. 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 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.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.904. REGISTERED AGENT. A foreign limited liability partnership subject to this chapter shall maintain a registered office and registered agent in this state in accordance with Chapter 5. (TRPA 10.05.)

Source Law

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.

(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.

(c) The statement required by Subsection (b) must be executed on behalf of the foreign limited liability partnership by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of all applicable filing fees, shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification.

(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 statement of foreign qualification regarding the information required by Section 10.02(a)(5).

(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).

(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) The statement required by Subsection (h) must be signed by the registered agent or, if the registered agent is a corporation, by an officer of the corporation. 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).

(j) Each partner and 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.

(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.

(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. 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.

Service had in this manner on the secretary of state is returnable in not less than 30 days.

(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.

(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. The substantive provisions in the source law are contained in Chapter 5.

Revised Law

Sec. 152.905. STATEMENT OF FOREIGN QUALIFICATION. (a) Before transacting business in this state, a foreign limited liability partnership must file an application for registration in accordance with this section and Chapters 4 and 9.

(b) The application must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a foreign limited liability partnership on:

- (1) the date on which a completed initial or renewal statement of foreign qualification is filed with the secretary of state in accordance with Chapter 4; or
- (2) a later date specified in the statement.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date, unless the statement is:

- (1) withdrawn or revoked at an earlier time; or
- (2) renewed in accordance with Section 152.908. (TRPA 10.02(a), (b), (d), (e).)

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:

(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";

(2) the federal tax identification number of the partnership;

(3) the state where it is formed, 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;

(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;

(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

(8) in brief, the partnership's business.

(b) The statement of qualification must be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

. . .

(d) A partnership is registered as a foreign limited liability partnership on filing a completed initial or renewal statement of foreign qualification, in duplicate with the required fee, or on a

later date specified in the statement. A registration is not affected by later changes in the partners of the partnership.

(e) An initial statement of foreign qualification filed under this subsection and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subsection (g).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.906. CANCELLATION OF REGISTRATION. (a) A registration may be canceled by filing a certificate of cancellation.

(b) The certificate of cancellation must:

(1) contain:

(A) the federal tax identification number of the partnership; and

(B) the date of effectiveness of the partnership's last application for registration under this subchapter; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners. (TRPA 10.02(f) (part).)

Source Law

(f) A registration may be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of partners. A withdrawal notice must include the name of the partnership, the federal tax identification number of the partnership, the date of registration of the partnership's last statement of foreign qualification under this section, and a current street address of the partnership's principal office in this state or outside this state, if applicable. . . .

Revisor's Note

Section 152.906 uses the term

"certificate of cancellation" rather than "withdrawal notice" as referenced in Section 10.02(f), Texas Revised Partnership Act. The source law's requirement of including the street address of the partnership's principal office in the certificate of cancellation has been omitted in the revised law.

Revised Law

Sec. 152.907. EFFECT OF CERTIFICATE OF CANCELLATION. A certificate of cancellation terminates the registration of the partnership as a foreign limited liability partnership as of the date on which the notice is filed or a later date specified in the notice, but not later than the expiration date under Section 152.905(e). (TRPA 10.02(f) (part).)

Source Law

(f) . . . A withdrawal notice terminates the status of the partnership as a foreign limited liability partnership as of the date of filing the notice or a later date specified in the notice, but not later than the expiration date under Subsection (e).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.908. RENEWAL OF REGISTRATION. (a) An effective registration may be renewed before its expiration by filing a renewal application for registration with the secretary of state in accordance with Chapter 4.

(b) The renewal application must contain:

(1) current information required for an initial statement of qualification; and

(2) the most recent date of registration of the partnership.

(c) An application for registration filed under this section continues an effective registration for one year after the date the registration would otherwise expire. (TRPA 10.02(g).)

Source Law

(g) An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state a statement of foreign qualification containing current information of the kind required in an initial statement of qualification and the most recent date of registration of the

partnership. The renewal statement of qualification must be accompanied by a fee of \$200 for each partner in this state on the date of renewal, not to exceed \$750. A renewal statement of foreign qualification filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

Revisor's Note

No substantive change is intended. The Texas Revised Partnership Act fee requirement is set forth in Section 4.158.

Revised Law

Sec. 152.909. ACTION BY SECRETARY OF STATE. The secretary of state may remove from its active records the registration of a foreign limited liability partnership the registration of which has:

- (1) been withdrawn or revoked; or
- (2) expired and not been renewed. (TRPA 10.02(h).)

Source Law

(h) The secretary of state may remove from its active records the registration of a foreign limited liability partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.910. EFFECT OF FAILURE TO QUALIFY. (a) A foreign limited liability partnership that transacts business in this state without being registered is subject to Subchapter B, Chapter 9.

(b) A partner of a foreign limited liability partnership is not liable for a debt or obligation of the partnership solely because the partnership transacted business in this state without being registered. (TRPA 10.03.)

Source Law

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 foreign limited liability partnership transacted business in Texas without registration.

Revisor's Note

As with other foreign filing entities, the revised law makes foreign limited liability partnerships subject to the civil penalty and late filing fee provided in Subchapter B, Chapter 9.

Revised Law

Sec. 152.911. AMENDMENT. (a) A document filed under this subchapter may be amended by filing with the secretary of state an application for amendment of registration in accordance with Chapter 4.

(b) The application for amendment must contain:

(1) the name of the partnership;

(2) the tax identification number of the partnership;

(3) the identity of the document being amended;

(4) a reference to the date on which the document being amended was filed;

(5) the part of the document being amended; and

(6) the amendment or correction. (TRPA 10.02(k).)

Source Law

(k) A document filed under this section may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. The

articles of amendment must contain the name of the partnership, the tax identification number of the partnership, the identity of the document being amended, the date on which the document being amended was filed, the part of the document being amended, and the amendment or correction. Two copies of the articles of amendment must be filed, accompanied by a fee of \$10 and, if the amendment increases the number of partners, a fee of \$200 for each partner in this state added by amendment, not to exceed \$750.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.912. EXECUTION OF APPLICATION FOR AMENDMENT. The application for amendment must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners. (TRPA 10.02(k) (part).)

Source Law

(k) A document filed under this section may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 152.913. EXECUTION OF STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. A statement filed by a foreign limited liability partnership in accordance with Section 5.202 must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners. (TRPA 10.03(c) (part).)

Source Law

(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 foreign limited liability partnership

transacted business in Texas without
registration. . . .

Revisor's Note

No substantive change is intended.

CHAPTER 153. LIMITED PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 153.001. DEFINITION. In this chapter, "other limited partnership provisions" means the provisions of Title 1 and Chapters 151 and 154, to the extent applicable to limited partnerships. (New.)

Revisor's Note

This definition has been added for the purposes of referencing the other provisions of the Code applicable to limited partnerships.

Revised Law

Sec. 153.002. CONSTRUCTION. (a) This chapter and the other limited partnership provisions shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

(b) The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter and the other limited partnership provisions. (TRLPA 13.01.)

Source Law

13.01. (a) This Act shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

(b) The rule that statutes in derogation of the common law are to be strictly construed has no application to this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.003. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), in a case not provided for by this chapter and the other limited partnership provisions, the provisions of Chapter 152 governing partnerships that are not limited partnerships and the rules of law and equity govern.

(b) The powers and duties of a limited partner shall not be governed by a provision of Chapter 152 that would be inconsistent with the nature and role of a limited partner as contemplated by

this chapter.

(c) A limited partner shall not have any obligation or duty of a general partner solely by reason of being a limited partner. (TRLPA 13.03(a); New.)

Source Law

(a) In any case not provided for by this Act, the applicable statute governing partnerships that are not limited partnerships and the rules of law and equity, including the law merchant, govern.

Revisor's Note

Sections 153.003(b) and (c) are new subsections necessitated by the organizational scheme of the code. Section 153.003(a) carries forward the rule from Section 13.03, Texas Revised Limited Partnership Act, that the law governing general partnerships applies in a case not provided for by the limited partnership statute. This concept is sometimes referred to as "linkage" of the limited partnership act to the law governing general partnerships. The code defines "partner" in Chapter 1 to include both general and limited partners. A literal application of this definition, along with the linkage provision in Section 153.003(a), would cause the provisions of Chapter 152 governing general partnerships to apply to limited partners as well as general partners where Chapter 153 governing limited partnerships was silent on an issue. Some of these provisions clearly should not apply to limited partners. Thus, the language in Section 153.003(b) has been added to make it clear that Chapter 152 governing general partnerships does not apply to limited partners if it would be inconsistent with the nature and role of a limited partner as contemplated by Chapter 153 governing limited partnerships. Section 153.003(c) clarifies that a limited partner does not have any obligation or duty of a general partner solely by reason of being a limited partner.

Revised Law

Sec. 153.004. NONWAIVABLE TITLE 1 PROVISIONS. (a) Except

as provided by this section, the following provisions of Title 1 may not be waived or modified in the partnership agreement of a limited partnership:

(1) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;

(2) Chapter 2, other than Section 2.104(c)(2), 2.104(c)(3), or 2.113;

(3) Chapter 3, other than Subchapters C and E of that chapter and Section 3.151 (provided, that in all events a partnership agreement may not validly waive or modify Sections 153.551 and 153.552); or

(4) Chapter 4, 5, 10, 11, or 12, other than Section 11.058.

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

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

(1) the person or group of persons who are entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved. (New.)

Revisor's Note

Section 153.004, a provision similar to Section 152.002(b)(9), lists the provisions of Title 1 that may not be validly waived or modified by the partners in a limited partnership, subject to specifically enumerated exceptions.

Revised Law

Sec. 153.005. WAIVER OR MODIFICATION OF RIGHTS OF THIRD PARTIES. A provision in this title or in that part of Title 1 applicable to a limited partnership that grants a right to a person, other than a general partner, a limited partner, or assignee of a partnership interest in a limited partnership, may be waived or modified in the partnership agreement of the limited partnership only if the person consents to the waiver or modification. (New.)

Revisor's Note

This provision is similar to Section 101.054 for limited liability companies and is included for purposes of consistency.

[Sections 153.006-153.050 reserved for expansion]

SUBCHAPTER B. SUPPLEMENTAL PROVISIONS REGARDING AMENDMENT
TO CERTIFICATE OF FORMATION

Revised Law

Sec. 153.051. REQUIRED AMENDMENT TO CERTIFICATE OF
FORMATION. (a) A general partner shall file a certificate of
amendment reflecting the occurrence of one or more of the
following events not later than the 30th day after the date on
which the event occurred:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner;
- (3) a change in the name of the limited partnership;

or

(4) except as provided by Section 5.202, a change in:
(A) the address of the registered office; or
(B) the name or address of the registered agent
of the limited partnership.

(b) A general partner who becomes aware that a statement in
a certificate of formation was false when made or that a matter
described in the certificate has changed, making the certificate
false in any material respect, shall promptly amend the
certificate to make it accurate. (TRLPA 2.02(b), (c), (e).)

Source Law

(b) A general partner shall file a
certificate of amendment reflecting the
occurrence of one or more of the following
events not later than the 30th day after the
date of the occurrence of the event:

- (1) the admission of a new general
partner;
- (2) the withdrawal of a general
partner;
- (3) a change in the name of the
limited partnership; or

(4) except as provided by
Subsection (b) or (h) of Section 1.06 of this
Act, a change in the address of the
registered office or a change in the name or
address of the registered agent of the
limited partnership.

(c) A general partner who becomes aware
that a statement in a certificate of limited
partnership was false when made or that a
matter described in the certificate has
changed, making the certificate false in any
material respect, shall promptly amend the
certificate to make it accurate.

(e) Unless otherwise provided by this Act, a certificate of amendment is effective when filed with the secretary of state or at a later date or time specified in the certificate if there has been substantial compliance with the requirements of this section.

Revisor's Note

Section 2.02(e), Texas Revised Limited Partnership Act, provides that unless otherwise provided, a certificate of amendment is effective if there is "substantial compliance" with the requirements of Section 2.02. In an effort to standardize provisions, the applicable code provisions (Chapter 3 and Subchapter B, Chapter 153) do not carry over the "substantial compliance" concept. This concept is made obsolete by the simplified form of certificate of formation.

Revised Law

Sec. 153.052. DISCRETIONARY AMENDMENT TO CERTIFICATE OF FORMATION. (a) A certificate of formation may be amended at any time for a proper purpose as determined by the general partners.

(b) A certificate of formation may be amended to state the name, mailing address, and street address of the business or residence of each person winding up the limited partnership's affairs if, after an event requiring the winding up of a limited partnership but before the limited partnership is reconstituted or a certificate of cancellation is filed as provided by Section 153.451:

(1) the certificate of formation has been amended to reflect the withdrawal of all general partners; or

(2) a person who is not shown on the certificate of formation as a general partner is carrying out the winding up of a limited partnership's affairs.

(c) If the certificate of formation is amended under Subsection (b), each person winding up the limited partnership's affairs shall execute and file the certificate of amendment. A person winding up the partnership's affairs is not subject to liability as a general partner because of the filing of the certificate of amendment.

(d) A general partner who is not winding up the limited partnership's affairs is not required to execute and file a certificate of amendment as provided by this section. (TRLPA 2.02(d), (f).)

Source Law

(d) A certificate of limited partnership may be amended at any time for any other proper purpose determined by the general partners.

(f) If after the dissolution of a limited partnership but before the limited partnership is either reconstituted or a certificate of cancellation is filed as provided in Section 2.03 of this Act,

(i) the certificate of limited partnership has been amended to reflect the withdrawal of all general partners, then the certificate of limited partnership may be amended to state the name, the mailing address and the street address of the business or residence of each person winding up the limited partnership's affairs, each of whom shall execute and file the certificate of amendment, and each of whom is not subject to liability as a general partner by reason of the amendment, or

(ii) winding up of a limited partnership's affairs is being carried out by a person who is not shown on the certificate of limited partnership as a general partner, then the certificate of limited partnership may be amended to add the name, the mailing address and the street address of the business or residence of each person winding up the limited partnership's affairs, each of whom shall execute and file the certificate of amendment, and each of whom is not subject to liability as a general partner by reason of the amendment.

A general partner who is not winding up the limited partnership's affairs need not execute a certificate of amendment that is executed and filed as provided by this section.

Revisor's Note

No substantive change is intended. The revised law uses the term "certificate of formation" rather than "certificate of limited partnership."

[Sections 153.053-153.100 reserved for expansion]

SUBCHAPTER C. LIMITED PARTNERS

Revised Law

Sec. 153.101. ADMISSION OF LIMITED PARTNERS. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the later of:

(1) the date on which the limited partnership is formed; or

(2) the date stated in the records of the limited partnership as the date on which the person becomes a limited partner or, if that date is not stated in those records, the date on which the person's admission is first reflected in the records of the limited partnership.

(b) After a limited partnership is formed, a person who acquires a partnership interest directly from the limited partnership becomes a new limited partner on:

(1) compliance with the provisions of the partnership agreement governing admission of new limited partners; or

(2) if the partnership agreement does not contain relevant admission provisions, the written consent of all partners.

(c) After formation of a limited partnership, an assignee of a partnership interest becomes a new limited partner as provided by Section 153.253(a).

(d) A person may be a limited partner unless the person lacks capacity apart from this chapter and the other limited partnership provisions. (TRLPA 3.01.)

Source Law

3.01. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the latter of:

(1) the date of formation of the limited partnership; or

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

(b) After the formation of a limited partnership, a person becomes a new limited partner:

(1) in the case of a person acquiring a partnership interest directly

from the limited partnership, on compliance with the provisions of the partnership agreement governing admission of new limited partners or, if the partnership agreement contains no relevant admission provisions, on the written consent of all partners; and

(2) in the case of an assignee of a partnership interest, as provided by Subsection (a) of Section 7.04 of this Act.

(c) Any person may be a limited partner unless the person lacks capacity apart from this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.102. LIABILITY TO THIRD PARTIES. (a) A limited partner is not liable for the obligations of a limited partnership unless:

(1) the limited partner is also a general partner; or

(2) in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business.

(b) If the limited partner participates in the control of the business, the limited partner is liable only to a person who transacts business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner. (TRLPA 3.03(a), (d).)

Source Law

(a) Except as provided by Subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner does participate in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(d) A limited partner who knowingly permits that limited partner's name to be

used in the name of the limited partnership, except under circumstances permitted by Subdivision (1) of Section 1.03 of this Act is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Revisor's Note

Section 153.102 contains the same Texas Revised Limited Partnership Act standard for determining when a limited partner is liable for the obligations of a limited partnership, with one exception. Texas Revised Limited Partnership Act Section 3.03(d) provides that a limited partner who knowingly permits the use of that limited partner's name in the name of the limited partnership is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner. This provision was not included in Section 153.102 or elsewhere in the Code. The reasons for its deletion are primarily two-fold: (i) first, it was felt to be an arcane provision that was a trap for the unwary limited partner and served no useful purpose in protecting creditors; and (ii) shareholders and limited liability company members do not lose their limited liability if their names appear in the name of a corporation or limited liability company, respectively, and there does not appear to be any overriding public policy rationale for treating limited partners differently.

Revised Law

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and Sections 153.102, 153.104, and 153.105, a limited partner does not participate in the control of the business because the limited partner has or has acted in one or more of the following capacities or possesses or exercises one or more of the following powers:

- (1) acting as:
 - (A) a contractor for or an agent or employee of the limited partnership;
 - (B) a contractor for or an agent or employee of a

general partner;

(C) an officer, director, or stockholder of a corporate general partner;

(D) a partner of a partnership that is a general partner of the limited partnership; or

(E) a member or manager of a limited liability company that is a general partner of the limited partnership;

(2) acting in a capacity similar to that described in Subdivision (1) with any other person that is a general partner of the limited partnership;

(3) consulting with or advising a general partner on any matter, including the business of the limited partnership;

(4) acting as surety, guarantor, or endorser for the limited partnership, guaranteeing or assuming one or more specific obligations of the limited partnership, or providing collateral for borrowings of the limited partnership;

(5) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(6) winding up the business of a limited partnership under Chapter 11 and Subchapter K of this chapter;

(7) taking an action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) serving on a committee of the limited partnership or the limited partners; or

(9) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the dissolution or winding up of the limited partnership;

(B) an election to reconstitute the limited partnership or continue the business of the limited partnership;

(C) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset of the limited partnership;

(D) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(E) a change in the nature of the business of the limited partnership;

(F) the admission, removal, or retention of a general partner;

(G) the admission, removal, or retention of a limited partner;

(H) a transaction or other matter involving an actual or potential conflict of interest;

(I) an amendment to the partnership agreement or certificate of formation;

(J) if the limited partnership is qualified as an

investment company under the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required by that Act or the rules and regulations of the Securities and Exchange Commission under that Act, to be approved by the holders of beneficial interests in an investment company, including:

- (i) electing directors or trustees of the investment company;
- (ii) approving or terminating an investment advisory or underwriting contract;
- (iii) approving an auditor; and
- (iv) acting on another matter that that Act requires to be approved by the holders of beneficial interests in the investment company;
- (K) indemnification of a general partner under Chapter 8 or otherwise;
- (L) any other matter stated in the partnership agreement;
- (M) the exercising of a right or power granted or permitted to limited partners under this code and not specifically enumerated in this section; or
- (N) the merger or conversion of a limited partnership. (TRLPA 3.03(b).)

Source Law

(b) For the purposes of this section, a limited partner does not participate in the control of the business by virtue of the limited partner's having or acting in one or more of the following capacities or possessing or exercising one or more of the following powers:

- (1) acting as a contractor for or an agent or employee of the limited partnership or of a general partner, an officer, director, or stockholder of a corporate general partner, a partner of a partnership that is a general partner of the limited partnership, a member or manager of a limited liability company that is a general partner of the limited partnership, or in a similar capacity with any other person that is a general partner;
- (2) consulting with or advising a general partner on any matter, including the business of the limited partnership;
- (3) acting as surety, guarantor, or endorser for the limited partnership, to

guarantee or assume one or more specific obligations of the limited partnership, or to provide collateral for borrowings of the limited partnership;

(4) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(5) winding up a limited partnership under Section 8.04 of this Act;

(6) taking any action required or permitted by law to bring, or pursue, or settle or otherwise terminate a derivative action in the right of the limited partnership;

(7) serving on a committee of the limited partnership or the limited partners; or

(8) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the dissolution and winding up of the limited partnership or an election to reconstitute the limited partnership or an election to continue the business of the limited partnership;

(B) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset or assets of the limited partnership;

(C) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(D) a change in the nature of the business of the limited partnership;

(E) the admission, removal, or retention of a general partner;

(F) the admission, removal, or retention of a limited partner;

(G) a transaction or other matter involving an actual or potential conflict of interest;

(H) an amendment to the partnership agreement or certificate of limited partnership;

(I) if the limited partnership is qualified as an investment company under the federal Investment Company

Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required by the Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company including:

(i) electing directors or trustees of the investment company;

(ii) approving or terminating investment advisory or underwriting contracts;

(iii) approving auditors; and

(iv) acting on any other matters that the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) requires to be approved by the holders of beneficial interests in the investment company;

(J) indemnification of a general partner under Article 11 of this Act;

(K) any other matter stated in the partnership agreement;

(L) exercising a right or power granted or permitted to limited partners under this Act and not specifically enumerated in this subsection; or

(M) the merger of a limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.104. ENUMERATION OF ACTIONS NOT EXCLUSIVE. The enumeration in Section 153.103 does not mean that a limited partner who has acted or acts in another capacity or possesses or exercises another power constitutes participation by that limited partner in the control of the business of the limited partnership. (TRLPA 3.03(c).)

Source Law

(c) The enumeration in Subsection (b) of this section does not mean that having or acting in other capacities or possessing or exercising other powers by a limited partner constitutes participation by that limited

partner in the control of the business of the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.105. CREATION OF RIGHTS. Sections 153.103 and 153.104 do not create rights of limited partners. Rights of limited partners may be created only by:

- (1) the certificate of formation;
- (2) the partnership agreement;
- (3) other sections of this chapter; or
- (4) the other limited partnership provisions. (TRLPA 3.03(e).)

Source Law

(e) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.106. ERRONEOUS BELIEF OF CONTRIBUTOR BEING LIMITED PARTNER. Except as provided by Section 153.109, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is not liable as a general partner or otherwise obligated because of making or attempting to make the contribution, receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

- (1) causes an appropriate certificate of formation or certificate of amendment to be signed and filed;
- (2) files or causes to be filed with the secretary of state a written statement in accordance with Section 153.107; or
- (3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section. (TRLPA 3.04(a) (part).)

Source Law

(a) Except as provided by Subsection (c) of this section, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is

not liable as a general partner or otherwise obligated by reason of making or attempting to make the contribution, receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed;

(2) files or causes to be filed with the secretary of state in accordance with Subsection (a) of Section 2.07 of this Act a written statement . . . ; or

(3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.107. STATEMENT REQUIRED FOR LIABILITY PROTECTION.

(a) A written statement filed under Section 153.106(2) must be entitled "Filing under Section 153.106(2), Business Organizations Code," and contain:

(1) the name of the partnership;

(2) the name and mailing address of the person signing the written statement; and

(3) a statement that:

(A) the person signing the written statement acquired a limited partnership interest in the partnership;

(B) the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of formation required by the code and the general partner has failed or refused to file the certificate; and

(C) the statement is being filed under Section 153.106(2) and the person signing the written statement is claiming status as a limited partner of the partnership named in the document.

(b) The statement is effective for 180 days.

(c) A statement filed under Section 153.106(2) may be signed by more than one person claiming limited partnership status under this section and Sections 153.106, 153.108, and 153.109. (TRLPA 3.04(a) (part), (b) (part), (e).)

Source Law

(a) . . .

(2) files or causes to be filed with the secretary of state in accordance with Subsection (a) of Section 2.07 of this Act a written statement entitled "Filing Pursuant to Subdivision (2) of Subsection (a) of Section 3.04, Texas Revised Limited Partnership Act" containing:

(A) the name of the partnership;

(B) the name and mailing address of the person signing the written statement;

(C) a statement that the person signing the written statement acquired a limited partnership interest in the partnership;

(D) a statement that the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of limited partnership required by this Act and that the general partner has failed or refused to do so; and

(E) a statement that the written statement is being filed pursuant to this subdivision and that the person signing the written statement is claiming status as a limited partner of the partnership named in the writing; or

. . .

(b) A written statement filed under Subdivision (2) of Subsection (a) of this section is effective for 180 days. . . .

. . .

(e) More than one person claiming limited partnership status under this section may sign a written statement filed under Subdivision (2) of Subsection (a) of this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.108. REQUIREMENTS FOR LIABILITY PROTECTION FOLLOWING EXPIRATION OF STATEMENT. (a) If a certificate

described by Section 153.106(1) has not been filed before the expiration of the 180-day period described by Section 153.107(b), the person filing the statement has no further protection from liability under Section 153.106(2) unless the person complies with this section. To be protected under Section 153.106 the person must, not later than the 10th day after the date of expiration of the 180-day period:

- (1) withdraw under Section 153.106(3); or
- (2) bring an action under Section 153.554 to compel the execution and filing of a certificate of formation or amendment.

(b) If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing the action continues to be protected from liability under Section 153.106(2) until the action is finally decided adversely to that person.

(c) This section and Sections 153.106, 153.107, and 153.109 do not protect a person from liability that arises under Sections 153.102-153.105. (TRLPA 3.04(b) (part), (d).)

Source Law

(b) . . . If a certificate described by Subdivision (1) of Subsection (a) of this section has not been filed on or before the expiration of the 180-day period, the person filing the statement has no further protection from liability under Subdivision (2) of Subsection (a) and to be protected under this section must, within 10 days after the date of expiration of the 180-day period, withdraw under Subdivision (3) of Subsection (a) of this section or bring an action under Section 2.05 of this Act to compel the execution and filing of a certificate of limited partnership or amendment. If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing it continues to be protected from liability under Subdivision (2) of Subsection (a) until the action is finally decided adversely to that person. This section does not protect a person from liability that arises under Section 3.03 of this Act.

(d) This section does not protect a person from liability that arises under Section 3.03 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.109. LIABILITY OF ERRONEOUS CONTRIBUTOR.

Regardless of whether Sections 153.106, 153.107, and 153.108 apply, a person who makes a contribution in the circumstances described by Section 153.106 is liable as a general partner to a third party who transacts business with the partnership before an action taken under Section 153.106 if:

(1) the contributor has knowledge or notice that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor. (TRLPA 3.04(c).)

Source Law

(c) A person who makes a contribution in the circumstances described by Subsection (a) of this section is liable as a general partner, whether or not Subsection (a) or (b) of this section would otherwise apply, to any third party who transacts business with the partnership before the taking of an action under Subsection (a) if:

(1) the contributor knew or should have known that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.110. WITHDRAWAL OF LIMITED PARTNER. A limited partner may withdraw from a limited partnership only at the time or on the occurrence of an event specified in a written partnership agreement. The withdrawal of the partner must be made in accordance with that agreement. (TRLPA 6.03.)

Source Law

6.03. A limited partner may withdraw from a limited partnership only at the time or on the occurrence of events specified in a partnership agreement and in accordance with that partnership agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.111. DISTRIBUTION ON WITHDRAWAL. Except as otherwise provided by Section 153.210 or the partnership agreement, on withdrawal a withdrawing limited partner is entitled to receive, not later than a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal. (TRLPA 6.04.)

Source Law

6.04. Except as otherwise provided by this article or the partnership agreement, on withdrawal any withdrawing limited partner is entitled to receive, within a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. A limited partner who receives a distribution that is not permitted under Section 153.210 is not required to return the distribution unless the limited partner knew that the distribution violated the prohibition of Section 153.210. This section does not affect an obligation of the limited partner under the partnership agreement or other applicable law to return the distribution. (TRLPA 6.07(b).)

Source Law

(b) A limited partner who receives a distribution that is not permitted under Subsection (a) of this section has no liability under this Act to return the distribution unless the limited partner knew that the distribution violated the prohibition of Subsection (a). This

subsection does not affect any obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.113. POWERS OF ESTATE OF LIMITED PARTNER WHO IS DECEASED OR INCAPACITATED. If a limited partner who is an individual dies or a court adjudges the limited partner to be incapacitated in managing the limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power of an assignee to become a limited partner under the partnership agreement. (TRLPA 7.05.)

Source Law

7.05. If a limited partner who is an individual dies or a court of competent jurisdiction adjudges the limited partner to be incompetent to manage that limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power under the partnership agreement of an assignee to become a limited partner.

Revisor's Note

No substantive change is intended.

[Sections 153.114-153.150 reserved for expansion]

SUBCHAPTER D. GENERAL PARTNERS

Revised Law

Sec. 153.151. ADMISSION OF ADDITIONAL GENERAL PARTNERS. (a) After a limited partnership is formed, additional general partners may be admitted:

(1) in the manner provided by a written partnership agreement; or

(2) if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) A person may be a general partner unless the person

lacks capacity apart from this chapter. (TRLPA 4.01.)

Source Law

4.01. (a) After the formation of a limited partnership, additional general partners may be admitted as provided in a written partnership agreement or, if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) Any person may be a general partner unless the person lacks capacity apart from this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.152. GENERAL POWERS AND LIABILITIES OF GENERAL PARTNER. (a) Except as provided by this chapter, the other limited partnership provisions, or a partnership agreement, a general partner of a limited partnership:

(1) has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners; and

(2) has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

(b) Except as provided by this chapter or the other limited partnership provisions, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to a person other than the partnership and the other partners. (TRLPA 4.03.)

Source Law

4.03. (a) Except as provided by this Act or a partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided by this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided by this Act or in the partnership agreement, a general partner of a

limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.153. POWERS AND LIABILITIES OF PERSON WHO IS BOTH GENERAL PARTNER AND LIMITED PARTNER. A person who is both a general partner and a limited partner:

(1) has the rights and powers and is subject to the restrictions and liabilities of a general partner; and

(2) except as otherwise provided by the partnership agreement, this chapter, or the other limited partnership provisions, has the rights and powers and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner. (TRLPA 4.04 (part).)

Source Law

4.04. . . . A person who is both a general partner and a limited partner has the rights and powers and is subject to the restrictions and liabilities, of a general partner and, except as otherwise provided by the partnership agreement or this Act, has the rights and powers, and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.154. CONTRIBUTIONS BY AND DISTRIBUTIONS TO GENERAL PARTNER. A general partner of a limited partnership may make a contribution to, be allocated profits and losses of, and receive a distribution from the limited partnership as a general partner, a limited partner, or both. (TRLPA 4.04 (part).)

Source Law

4.04. A general partner of a limited partnership may make contributions to, be allocated profits and losses of, and receive distributions from the limited partnership as a general partner, a limited partner, or

both. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.155. WITHDRAWAL OF GENERAL PARTNER. (a) A person ceases to be a general partner of a limited partnership on the occurrence of one or more of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Subsection (b);

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 153.252(b);

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided by a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in a federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law;

(E) files a pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described by Paragraphs (A)-(D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties;

(5) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the expiration of:

(A) 120 days after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law if the proceeding has not been previously dismissed;

(B) 90 days after the date of the appointment, without the general partner's consent, of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties if the appointment has not previously been vacated or stayed; or

(C) 90 days after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) the death of a general partner;

(7) a court adjudicating a general partner who is an individual mentally incompetent to manage the general partner's person or property;

(8) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities intended to conclude in the termination of a trust that is a general partner, but not merely the substitution of a new trustee;

(9) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities of a separate partnership that is a general partner;

(10) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the:

(A) filing of a certificate of termination or its equivalent for an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner; or

(B) termination or revocation of the certificate of formation or its equivalent of an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner and the expiration of 90 days after the date of notice to the entity of termination or revocation without a reinstatement of its certificate of formation or its equivalent; or

(11) the distribution by the fiduciary of an estate that is a general partner of the estate's entire interest in the limited partnership.

(b) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under Subsection (a) by giving written notice to the other partners. (TRLPA 4.02(a), 6.02(a) (part).)

Source Law

[4.02]

(a) A person ceases to be a general partner of a limited partnership on the occurrence of any of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Section 6.02 of this Act;

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 7.02 of

this Act;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described in Paragraphs (A) through (D) of this subdivision; or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(5) unless otherwise provided in a written partnership agreement or with the written consent of all partners, 120 days expire after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law if the proceeding has not been previously dismissed, or 90 days expire after the date of the appointment, without the general partner's consent or acquiescence, of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties if the appointment has not previously been

vacated or stayed, or 90 days expire after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) in the case of a general partner who is a natural person:

(A) the general partner's death; or

(B) the entry by a court of competent jurisdiction adjudicating the general partner mentally incompetent to manage the general partner's person or property;

(7) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a trust, the commencement of winding up activities intended to conclude in the termination of the trust, but not merely the substitution of a new trustee;

(8) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter and the expiration of 90 days after the date of notice to the corporation of revocation without a reinstatement of its charter; or

(10) in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

[6.02]

(a) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under the provisions of Subsection (a) of Section 4.02 of this Act, by giving written notice to the other partners. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.156. NOTICE OF EVENT OF WITHDRAWAL. A general partner who is subject to an event that with the passage of the specified period becomes an event of withdrawal under Section 153.155(a)(4) or (5) shall notify the other partners of the event not later than the 30th day after the date on which the event occurred. (TRLPA 4.02(b).)

Source Law

(b) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under Subdivision (4) or (5) of Subsection (a) of this section shall notify the other partners of the event within 30 days after the date of occurrence of the event of withdrawal.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.157. WITHDRAWAL OF GENERAL PARTNER IN VIOLATION OF PARTNERSHIP AGREEMENT. Unless otherwise provided by the partnership agreement, a withdrawal by a general partner of a partnership for a definite term or particular undertaking before the expiration of that term or completion of that undertaking is a breach of the partnership agreement. (TRLPA 6.02(a) (part).)

Source Law

(a) . . . Unless otherwise provided by the partnership agreement, in the case of a partnership for a definite term or particular undertaking, a withdrawal by a general partner before the expiration of that term or completion of that undertaking is a breach of the partnership agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.158. EFFECT OF WITHDRAWAL. (a) Unless otherwise provided by a written partnership agreement and subject to the liability created under Section 153.162, if a general partner ceases to be a general partner under Section 153.155, the remaining general partner or partners, or, if there are no remaining general partners, a majority-in-interest of the limited partners in a vote that excludes any limited partnership interest

held by the withdrawing general partner, may:

(1) convert that general partner's partnership interest to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest minus the damages caused if the withdrawal constituted a breach of the partnership agreement.

(b) Until an action described by Subsection (a) is taken, the owner of the partnership interest of the withdrawn general partner has the status of an assignee under Subchapter F, Section 153.113, and Section 153.555.

(c) If there are no remaining general partners following the withdrawal of a general partner, the partnership may be reconstituted. (TRLPA 6.02(b), (e).)

Source Law

(b) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, if a general partner ceases to be a general partner under Section 4.02 of this Act, then the remaining general partner or partners or, if there are no remaining general partners, then the limited partners, at the option of a majority in interest of the limited partners in a vote that excludes any limited partner's interest held by the withdrawing general partner, may:

(1) convert that general partner's partnership interest to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest less the damages caused if the withdrawal constituted a breach of the partnership agreement.

Until one of the actions under Subdivision (1) or (2) of this subsection is taken, the owner of the partnership interest of the withdrawn general partner has the status of an assignee under Article VII of this Act.

(e) If there are no remaining general partners following the withdrawal of a

general partner, the partnership may be reconstituted under Section 8.03 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.159. CONVERSION OF PARTNERSHIP INTEREST AFTER WITHDRAWAL. If the partners convert the partnership interest under Section 153.158(a)(1), the limited partnership interest may be reduced pro rata with all other partners to provide compensation, an interest in the partnership, or both, to a replacement general partner. (TRLPA 6.02(c) (part).)

Source Law

(c) If the partners act under Subdivision (1) of Subsection (b) of this section, the limited partnership interest may be reduced pro rata with all other partners to provide compensation or an interest in the partnership, or both, to a replacement general partner,

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.160. EFFECT OF CONVERSION OF PARTNERSHIP INTEREST. (a) After an amendment to the certificate of formation reflecting the general partner's withdrawal as a general partner is filed under Section 153.051, the withdrawing general partner:

(1) may vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least voting rights with respect to the matter on which the vote is taken; and

(2) may not vote on the admission and compensation of a general partner who replaces the withdrawing general partner.

(b) If the general partner's withdrawal violates the partnership agreement, the general partner does not have voting rights. (TRLPA 6.02(c) (part).)

Source Law

(c) . . . and after the filing of an amendment to the certificate under Section 2.02 of this Act reflecting the general partner's withdrawal as a general partner, the withdrawing general partner is entitled to vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least

voting rights with respect to the matter on which the vote is taken, but may not vote on the admission and compensation of any general partner replacing the withdrawing general partner. If the general partner's withdrawal violates the partnership agreement, the general partner has no voting rights.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.161. LIABILITY OF GENERAL PARTNER FOR DEBT INCURRED AFTER EVENT OF WITHDRAWAL. (a) Unless otherwise provided by a written partnership agreement and subject to the liability created under Section 153.162, a general partner who ceases to be a general partner under Section 153.155 is not personally liable in the partner's capacity as a general partner for partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the debt was incurred reasonably believed that the partner remained a general partner.

(b) A creditor of the partnership has reason to believe that a partner remains a general partner if:

(1) the creditor had no knowledge or notice of the general partner's withdrawal and:

(A) was a creditor of the partnership at the time of the general partner's withdrawal; or

(B) had extended credit to the partnership within two years before the date of withdrawal; or

(2) the creditor had known that the partner was a general partner in the partnership before the general partner's withdrawal and had no knowledge or notice of the withdrawal and the general partner's withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted. (TRLPA 6.02(d).)

Source Law

(d) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, a general partner who ceases to be a general partner under Section 4.02 of this Act is not personally liable as a general partner for any partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the partnership debt is incurred reasonably believed that the partner

remained a general partner. A creditor of the partnership has a reasonable basis for believing that a partner remains a general partner if:

(1) the creditor was a creditor of the partnership at the time of the general partner's withdrawal or had extended credit to the partnership within two years before the withdrawal and had no knowledge or notice of the general partner's withdrawal; or

(2) the creditor had known that the general partner was a general partner in the partnership before withdrawal and had no knowledge or notice of the withdrawal, and the fact of withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.162. LIABILITY FOR WRONGFUL WITHDRAWAL. (a) If a general partner's withdrawal from a limited partnership violates the partnership agreement, the partnership may recover damages from the withdrawing general partner for breach of the partnership agreement, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform.

(b) In addition to pursuing any remedy available under applicable law, the partnership may effect the recovery of damages under Subsection (a) by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Section 153.158(a)(1), or both. (TRLPA 6.02(a) (part).)

Source Law

(a) . . . If the general partner's withdrawal violates the partnership agreement, the partnership may recover damages from the withdrawing general partner, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform, for breach of the partnership agreement. The partnership may, in addition to pursuing any remedies otherwise available under applicable

law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Subdivision (1) of Subsection (b) of this section, or both. . . .

Revisor's Note

No substantive change is intended.

[Sections 153.163-153.200 reserved for expansion]

SUBCHAPTER E. FINANCES

Revised Law

Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a limited partner may consist of a tangible or intangible benefit to the limited partnership or other property of any kind or nature, including:

- (1) cash;
- (2) a promissory note;
- (3) services performed;
- (4) a contract for services to be performed; and
- (5) another interest in or security of the limited partnership, another domestic or foreign limited partnership, or other entity. (TRLPA 5.01.)

Source Law

5.01. The contribution of a limited partner may consist of any tangible or intangible benefit to the limited partnership or other property of any kind or nature, including cash, a promissory note, services performed, a contract for services to be performed, other interests in or securities of the limited partnership, or interests in or securities of any other limited partnership, domestic or foreign, or other entity.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.202. ENFORCEABILITY OF PROMISE TO MAKE CONTRIBUTION. (a) A promise by a limited partner to make a contribution to, or pay cash or transfer other property to, a limited partnership is not enforceable unless the promise is in writing and signed by the limited partner.

- (b) Except as otherwise provided by the partnership

agreement, a partner or the partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or pay cash or transfer other property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances.

(c) If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of other property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to the portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Sections 153.551 and 153.552, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

(d) A partnership agreement may provide that the partnership interest of a partner who fails to make a payment of cash or transfer of other property to the partnership, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences, which may include:

(1) a reduction of the defaulting partner's percentage or other interest in the limited partnership;

(2) subordination of the partner's partnership interest to the interest of nondefaulting partners;

(3) a forced sale of the partner's partnership interest;

(4) forfeiture of the partner's partnership interest;

(5) the lending of money to the defaulting partner by other partners of the amount necessary to meet the defaulting partner's commitment;

(6) a determination of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the partnership interest at that value; or

(7) another penalty or consequence. (TRLPA 5.02(a), (b), (c).)

Source Law

(a) A promise by a limited partner to make a contribution to, or otherwise pay cash or transfer property to, a limited partnership is not enforceable unless set out in writing and signed by the limited partner.

(b) Except as otherwise provided by the partnership agreement, a partner or the

partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances. If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to that portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Section 1.07 of this Act, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

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

consequence.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.203. RELEASE OF OBLIGATION TO PARTNERSHIP. Unless otherwise provided by the partnership agreement, the obligation of a partner or the legal representative or successor of a partner to make a contribution, pay cash, transfer other property, or return cash or property paid or distributed to the partner in violation of this chapter or the partnership agreement may be compromised or released only by consent of all of the partners. (TRLPA 5.02(d) (part).)

Source Law

(d) Unless otherwise provided by the partnership agreement, the obligation of a partner or a partner's legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the partner in violation of this Act or the partnership agreement may be compromised or released only by consent of all of the partners. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.204. ENFORCEABILITY OF OBLIGATION. (a) Notwithstanding a compromise or release under Section 153.203, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on an obligation described by Section 153.203 may enforce the original obligation if:

(1) the obligation is reflected in a document signed by the partner; and

(2) the document is not amended or canceled to reflect the compromise or release.

(b) Notwithstanding the compromise or release, a general partner remains liable to persons other than the partnership and the other partners, as provided by Sections 153.152(a)(2) and (b). (TRLPA 5.02(d) (part).)

Source Law

(d) . . . Notwithstanding the compromise or release, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on that

obligation, after the partner signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation. A general partner, however, remains liable to persons other than the partnership and the other partners, as provided by Subsection (b) of Section 4.03 of this Act, notwithstanding the compromise or release. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.205. REQUIREMENTS TO ENFORCE CONDITIONAL OBLIGATION. (a) An obligation of a limited partner of a limited partnership that is subject to a condition may be enforced by the partnership creditor described by Section 153.204 only if the condition is satisfied or waived by or with respect to the limited partner.

(b) A conditional obligation of a limited partner of a limited partnership includes a contribution payable on a discretionary call of the limited partnership before the time the call occurs. (TRLPA 5.02(d) (part).)

Source Law

(d) . . . A conditional obligation may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by the applicable limited partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership before the time the call occurs.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.206. ALLOCATION OF PROFITS AND LOSSES. (a) The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement.

(b) If a written partnership agreement does not provide for the allocation of profits and losses, the profits and losses shall be allocated:

(1) in accordance with the current percentage or other interest in the partnership stated in partnership records of the kind described by Section 153.551(a); or

(2) if the allocation of profits and losses is not provided for in partnership records of the kind described by Section 153.551(a), in proportion to capital accounts. (TRLPA 5.03.)

Source Law

5.03. The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, the profits and losses shall be allocated in accordance with the then current percentage or other interest in the partnership stated in partnership records of the kind described in Subsection (a) of Section 1.07 of this Act. If the allocation of profits and losses is not provided by a written partnership agreement or in partnership records of the kind described in Subsection (a) of Section 1.07, profits and losses shall be allocated in proportion to capital accounts.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.207. RIGHT TO DISTRIBUTION. Subject to Section 153.210, when a partner becomes entitled to receive a distribution, the partner has with respect to the distribution the status of and is entitled to all remedies available to a creditor of the limited partnership. (TRLPA 6.06.)

Source Law

6.06. Subject to Sections 6.07 and 8.05 of this Act, at the time that a partner becomes entitled to receive a distribution, with respect to the distribution, that partner has the status of and is entitled to all remedies available to a creditor of the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.208. SHARING OF DISTRIBUTIONS. (a) A distribution of cash or another asset of a limited partnership shall be made to a partner in the manner provided by a written partnership

agreement.

(b) If a written partnership agreement does not provide otherwise, a distribution that is a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be maintained under Section 153.551(a), of the contribution made by each partner to the extent that the contribution has not been returned. A distribution that is not a return of capital shall be made in proportion to the allocation of profits as determined under Section 153.206.

(c) Unless otherwise defined by a written partnership agreement, in this section, "return of capital" means a distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by a prior distribution that was a return of capital. (TRLPA 1.02(13), 5.04.)

Source Law

[1.02]

(13) "Return of capital" means, unless otherwise provided in a written partnership agreement, any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by prior distributions that were a return of capital.

5.04. Distributions of cash or other assets of a limited partnership shall be made to the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, distributions that are a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be kept under Subsection (a) of Section 1.07 of this Act, of the contributions made by each partner to the extent that the contributions have not been returned, and distributions that are not a return of capital shall be made in proportion to the allocation of profits as determined under Section 5.03 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.209. INTERIM DISTRIBUTIONS. Except as otherwise provided by this section and Section 153.210, a partner is entitled to receive a distribution from a limited partnership to the extent and at the time or on the occurrence of an event specified in the partnership agreement before:

- (1) the partner withdraws from the partnership; and
- (2) the winding up of the partnership business.

(TRLPA 6.01.)

Source Law

6.01. Except as otherwise provided by this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the winding up of the partnership to the extent and at the times or on the occurrence of the events specified in the partnership agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.210. LIMITATION ON DISTRIBUTION. A limited partnership may not make a distribution to a partner if, immediately after giving effect to the distribution and despite any compromise of a claim referred to by Sections 153.203 and 153.204, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets. The fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets for purposes of this subsection only to the extent that the fair value of that property exceeds that liability. (TRLPA 6.07(a).)

Source Law

(a) A limited partnership may not make a distribution to its partners to the extent that, immediately after giving effect to the distribution and despite any compromise of a claim referred to in Subsection (d) of Section 5.02 of this Act, all liabilities of the limited partnership, other than

liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets only to the extent that the fair value of that property exceeds that liability.

Revisor's Note

No substantive change is intended.

[Sections 153.211-153.250 reserved for expansion]

SUBCHAPTER F. PARTNERSHIP INTEREST

Revised Law

Sec. 153.251. ASSIGNMENT OF PARTNERSHIP INTEREST. (a) Except as otherwise provided by the partnership agreement, a partnership interest is assignable wholly or partly.

(b) Except as otherwise provided by the partnership agreement, an assignment of a partnership interest:

- (1) does not dissolve a limited partnership;
- (2) does not entitle the assignee to become, or to exercise rights or powers of, a partner; and
- (3) entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items and to receive distributions to which the assignor was entitled to the extent those items are assigned. (TRLPA 7.02(a) (part).)

Source Law

(a) Unless otherwise provided by the partnership agreement:

- (1) a partnership interest is assignable in whole or in part;
- (2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become, or to exercise rights or powers of, a partner;
- (3) an assignment entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items, and to receive distributions, to which the assignor was entitled, to the extent those items are assigned; and

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.252. RIGHTS OF ASSIGNOR. (a) Except as otherwise provided by the partnership agreement, until the assignee becomes a partner, the assignor partner continues to be a partner in the limited partnership. The assignor partner may exercise any rights or powers of a partner, except to the extent those rights or powers are assigned.

(b) Except as otherwise provided by the partnership agreement, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority-in-interest of the limited partners. (TRLPA 7.02(a) (part).)

Source Law

(a) . . .

(4) until the assignee becomes a partner, the assignor partner continues to be a partner and to have the power to exercise any rights or powers of a partner, except to the extent those rights or powers are assigned; however, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority in interest of the limited partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.253. RIGHTS OF ASSIGNEE. (a) An assignee of a partnership interest, including the partnership interest of a general partner, may become a limited partner if and to the extent that:

- (1) the partnership agreement provides; or
- (2) all partners consent.

(b) An assignee who becomes a limited partner, to the extent of the rights and powers assigned, has the rights and powers and is subject to the restrictions and liabilities of a limited partner under a partnership agreement and this code. (TRLPA 7.04(a), (b) (part).)

Source Law

(a) An assignee of a partnership interest, including an assignee of the partnership interest of a general partner, may become a limited partner if and to the extent that:

(1) the partnership agreement provides; or

(2) all partners consent.

(b) An assignee who becomes a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under a partnership agreement and this Act. . . .

Revisor's Note

No substantive change is intended. The last sentence of Section 7.04(b), Texas Revised Limited Partnership Act, has been included in Section 153.254.

Revised Law

Sec. 153.254. LIABILITY OF ASSIGNEE. (a) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee does not have liability as a partner solely as a result of the assignment.

(b) Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner:

(1) is liable for the obligations of the assignor to make contributions as provided by Sections 153.202-153.204;

(2) is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and that could not be ascertained from a written partnership agreement; and

(3) is not liable for the obligations of the assignor under Sections 153.105, 153.112, and 153.162. (TRLPA 7.02(b), 7.04(b) (part).)

Source Law

[7.02]

(b) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee has no liability as a partner solely as a result of the assignment.

[7.04]

(b) . . . Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner also is liable for the obligations of the assignor to make contributions as provided by Section 5.02 of this Act, but is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from a written partnership agreement and is not liable for the obligations of his assignor under Article 6.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.255. LIABILITY OF ASSIGNOR. Regardless of whether an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Subchapter E and Sections 153.105, 153.112, and 153.162. (TRLPA 7.04(c).)

Source Law

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Articles 5 and 6 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.256. CHARGE IN PAYMENT OF JUDGMENT CREDITOR. (a) On application to a court by a judgment creditor of a partner or other owner of a partnership interest, the court may:

(1) charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest;

(2) appoint a receiver for the debtor partner's share of the partnership's profits and other money payable or that becomes payable to the debtor partner with respect to the limited partnership; and

(3) make other orders, directions, and inquiries that the circumstances of the case require.

(b) To the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor

has only the rights of an assignee of the partnership interest.

(c) The partnership interest charged may be:

(1) redeemed at any time before foreclosure; or

(2) in case of a sale directed by the court, and without constituting an event requiring winding up, purchased:

(A) by one or more of the general partners with separate property of any general partner; or

(B) with respect to partnership property, by one or more of the general partners whose interests are not charged, on the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by a general partner whose interest is charged.

(d) The remedies provided by Subsection (a) are exclusive of other remedies that may exist, including remedies under laws of this state applicable to partnerships without limited partners. (TRLPA 7.03(a), (b), (c).)

Source Law

(a) On application to a court of competent jurisdiction by a judgment creditor of a partner or of any other owner of a partnership interest, the court may charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest, may then or later appoint a receiver of the debtor partner's share of the partnership's profits and of any other money payable or that becomes payable to the debtor partner with respect to the partnership, and may make all other orders, directions, and inquiries that the circumstances of the case require. To the extent that the partnership interest is charged in this manner, the judgment creditor has only the rights of an assignee of the partnership interest.

(b) The partnership interest charged may be redeemed at any time before foreclosure or, in case of a sale directed by the court, may be purchased without a dissolution being caused:

(1) with separate property of any general partner, by any one or more of the general partners; or

(2) with respect to partnership property, by any one or more of the general partners whose interests are not charged, on

the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by any general partner whose interest is charged.

(c) The remedies provided by Subsection (a) of this section are exclusive of others that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.257. EXEMPTION LAWS APPLICABLE TO PARTNERSHIP INTEREST NOT AFFECTED. Section 153.256 does not deprive a partner of the benefit of an exemption law applicable to that partner's partnership interest. (TRLPA 7.03(d).)

Source Law

(d) This section does not deprive any partner of the benefit of any exemption laws applicable to that partner's partnership interest.

Revisor's Note

No substantive change is intended.

[Sections 153.258-153.300 reserved for expansion]

SUBCHAPTER G. REPORTS

Revised Law

Sec. 153.301. PERIODIC REPORT. The secretary of state may require a domestic limited partnership or a foreign limited partnership registered to transact business in this state to file a report not more than once every four years as required by this subchapter. (TRLPA 13.05(a) (part).)

Source Law

(a) The secretary of state may require a domestic limited partnership or a foreign limited partnership authorized to transact business in this state to file a report as required by this section. The report may not be required to be filed more than once every four years. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.302. FORM AND CONTENTS OF REPORT. (a) The report must:

(1) include:

(A) the name of the limited partnership;

(B) the state or territory under the laws of which the limited partnership is formed;

(C) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(D) the address of the principal office in the United States where records are to be kept or made available under Sections 153.551 and 153.552; and

(E) the name, mailing address, and street address of the business or residence of each general partner;

(2) be made on a form adopted by the secretary of state for that purpose; and

(3) be signed on behalf of the limited partnership by at least one general partner.

(b) The information contained in the report must be given as of the date of the execution of the report. (TRLPA 13.05(a) (part), (b) (part).)

Source Law

(a) . . . The report may not be required to be filed more than once every four years. The report must include:

(1) the name of the limited partnership and the state or territory under the laws of which it is organized;

(2) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(3) the address of the principal office in the United States where records are to be kept or made available under Section 1.07 of this Act; and

(4) the name, mailing address, and street address of the business or residence of each general partner.

(b) The report must be made on a form adopted by the secretary of state for that purpose, and the information contained in the report must be given as of the date of the execution of the report. The report must be signed on behalf of the limited partnership by at least one general partner. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.303. FILING FEE. The filing fee for the report is as provided by Chapter 4. (TRLPA 13.05(b) (part).)

Source Law

(b) . . . The filing fee for the report is \$50.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.304. DELIVERY OF REPORT. The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed under Section 153.305. (TRLPA 13.05(c) (part).)

Source Law

(c) The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed by the secretary of state stating that the report is due. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.305. ACTION BY SECRETARY OF STATE. (a) The secretary of state shall send a notice that the report required by Section 153.301 is due.

(b) The notice must be:

- (1) addressed to the limited partnership; and
- (2) mailed to:

(A) the registered office of the limited partnership;

(B) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(C) any other known place of business of the limited partnership.

(c) The secretary of state shall include with the notice a copy of a report form to be prepared and filed as provided by this subchapter. (TRLPA 13.05(c), (d) (part).)

Source Law

(c) The report must be delivered to the secretary of state not later than the 30th

day after the date on which notice is mailed by the secretary of state stating that the report is due. The notice shall be addressed to the limited partnership and mailed to:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(3) any other known place of business of the limited partnership.

(d) Along with the notice that the report is due, the secretary of state shall mail to the limited partnership copies of a report form to be prepared and filed as provided by this section. Two copies of the report shall be delivered to the secretary of state. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.306. EFFECT OF FILING REPORT. (a) If the secretary of state finds that the report complies with this subchapter, the secretary shall:

(1) accept the report for filing;

(2) acknowledge to the limited partnership the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) a reported change in the address of the registered office or principal office, or in the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(b) The filing of a report under Section 153.301 does not relieve the limited partnership of the requirement to file an amendment to the certificate of formation required under Section 153.051 or 153.052, except that the limited partnership is not required to file an amendment to change the information specified in Subsection (a)(3). (TRLPA 13.05(d) (part), (e).)

Source Law

(d) . . . If the secretary of state finds that the report complies with this section, the secretary shall:

(1) endorse on the report the word "Filed" and the month, day, and year of

filing;

(2) notify the limited partnership of the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) address changes reported for the registered office, principal office, and the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(e) The filing of a report under this section does not relieve the limited partnership of the requirement to file an amendment to the certificate of limited partnership required under Section 2.02 of this Act, except that the limited partnership is not required to file an amendment to change the registered office or agent.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.307. EFFECT OF FAILURE TO FILE REPORT. (a) A domestic or foreign limited partnership that fails to file a report under Section 153.301 when the report is due forfeits the limited partnership's right to transact business in this state. A forfeiture under this section takes effect without judicial ascertainment.

(b) When the right to transact business has been forfeited under this section, the secretary of state shall note that the right to transact business has been forfeited and the date of forfeiture on the record kept in the secretary's office relating to the limited partnership. (TRLPA 13.06(a), (b) (part).)

Source Law

(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. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.308. NOTICE OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. Notice of the forfeiture under Section 153.307 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 13.06(b) (part).)

Source Law

(b) . . . 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.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.309. EFFECT OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. (a) Unless the right of the limited partnership to transact business is revived in accordance with Section 153.310:

- (1) the limited partnership may not maintain an action, suit, or proceeding in a court of this state; and
- (2) a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the transaction of business by the limited partnership in this state.

(b) The forfeiture of the right to transact business in this state does not:

- (1) impair the validity of a contract or act of the limited partnership; or
- (2) prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(c) This section and Sections 153.307 and 153.308 do not affect the liability of a limited partner to the limited partnership. (TRLPA 13.06(c), (d).)

Source Law

(c) Unless the right of the limited partnership to transact business is revived in accordance with Section 13.07 of this Act, the limited partnership may not maintain an action, suit, or proceeding in a court of this state, and a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising out of the transaction of business by the limited partnership in this state. The forfeiture of the right to transact business in this state does not impair the validity of a contract or act of the limited partnership and does not prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(d) This section does not affect the liability of a limited partner in the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.310. REVIVAL OF RIGHT TO TRANSACT BUSINESS. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 153.309 may be relieved from the forfeiture by filing the required report not later than the 120th day after the date of mailing of the notice of forfeiture under Section 153.308, accompanied by the filing fees as provided by Chapter 4.

(b) If a limited partnership complies with Subsection (a), the secretary of state shall:

- (1) revive the right of the limited partnership to transact business in this state;
- (2) cancel the note regarding the forfeiture; and
- (3) note the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership. (TRLPA 13.07.)

Source Law

13.07. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 13.06 of this Act may be relieved from the forfeiture by filing the required report not later than

the 120th day after the date of mailing of the notice of forfeiture under Section 13.06(b) of this Act, together with:

- (1) the filing fee; and
- (2) a late fee in an amount equal to the lesser of:

- (A) \$25 for each month or fractional part of a month that has elapsed since the date of the notice of forfeiture; or

- (B) \$100.

(b) If a limited partnership complies with Subsection (a) of this section, the secretary of state shall revive the right of the limited partnership to transact business in this state, cancelling the notation regarding the forfeiture and noting the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.311. CANCELLATION OF CERTIFICATE OR REGISTRATION AFTER FORFEITURE. (a) The secretary of state may cancel the certificate of formation of a domestic limited partnership, or the registration of a foreign limited partnership, if the limited partnership:

- (1) forfeits its right to transact business in this state under Section 153.307; and
- (2) fails to revive that right under Section 153.310.

(b) Cancellation of the certificate or registration takes effect without judicial ascertainment.

(c) The secretary of state shall note the cancellation and the date of cancellation on the record kept in the secretary's office relating to the limited partnership.

(d) On cancellation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner to the limited partnership.

(TRLPA 13.08.)

Source Law

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.

(b) On cancellation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner of the limited partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.312. REINSTATEMENT OF CERTIFICATE OF FORMATION OR REGISTRATION. (a) A limited partnership the certificate of formation or registration of which has been canceled as provided by Section 153.311 may be relieved of the cancellation by filing the report required by Section 153.301, accompanied by the filing fees provided by Chapter 4.

(b) If the limited partnership pays the fees required by Subsection (a), the secretary of state shall:

(1) reinstate the certificate or registration of the limited partnership without judicial ascertainment;

(2) change the status of the limited partnership to active; and

(3) note the reinstatement on the record kept in the secretary's office relating to the limited partnership.

(c) If the name of the limited partnership is not available at the time of reinstatement, the secretary of state shall require the limited partnership as a precondition to reinstatement to:

(1) file an amendment to the partnership's certificate of formation; or

(2) in the case of a foreign limited partnership, amend its application for registration to adopt an assumed name for use in this state. (TRLPA 13.09.)

Source Law

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. 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 or adopt an assumed name for use in this state as a precondition to reinstatement.

Revisor's Note

No substantive change is intended.

[Sections 153.313-153.350 reserved for expansion]

SUBCHAPTER H. LIMITED PARTNERSHIP AS LIMITED
LIABILITY PARTNERSHIP

Revised Law

Sec. 153.351. REQUIREMENTS. A limited partnership is a limited liability partnership and a limited partnership if the partnership:

- (1) registers as a limited liability partnership:
 - (A) as permitted by its partnership agreement; or
 - (B) if its partnership agreement does not include a provision for becoming a limited liability partnership, with the consent of partners required to amend its partnership agreement;
- (2) complies with Subchapter J, Chapter 152; and
- (3) complies with Chapter 5. (TRLPA 2.14(a).)

Source Law

(a) A limited partnership is a registered limited liability partnership as well as a limited partnership if it:

- (1) registers as a registered limited liability partnership as provided by Section 3.08(b), Texas Revised Partnership Act, as permitted by its partnership

agreement or, if its partnership agreement does not include provisions for becoming a registered limited liability partnership, with the consent of partners required to amend its partnership agreement;

(2) complies with Section 3.08(d), Texas Revised Partnership Act; and

(3) has as the last words or letters of its name the words "Limited Partnership" or the abbreviation "Ltd." followed by the words "registered limited liability partnership" or the abbreviation "L.L.P."

Revisor's Note

No substantive change is intended, except as described in the Revisor's Note to Section 5.055.

Revised Law

Sec. 153.352. APPLICABILITY OF OTHER REQUIREMENTS. For purposes of applying Section 152.802 to a limited partnership:

(1) an application to become a limited liability partnership or to withdraw a registration must be signed by at least one general partner; and

(2) other references to a partner mean a general partner only. (TRLPA 2.14(b).)

Source Law

(b) In applying Section 3.08(b), Texas Revised Partnership Act, to a limited partnership:

(1) an application to become a registered limited liability partnership or to withdraw a registration must be executed by at least one general partner; and

(2) all other references to partners mean general partners only.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.353. LAW APPLICABLE TO PARTNERS. If a limited partnership is a limited liability partnership, Section 152.801 applies to a general partner and to a limited partner who is liable under other provisions of this chapter for the debts or obligations of the limited partnership. (TRLPA 2.14(c).)

Source Law

(c) If a limited partnership is a registered limited liability partnership, Section 3.08(a), Texas Revised Partnership Act, applies to its general partners and to any of its limited partners who, under other provisions of this Act, are liable for the debts or obligations of the limited partnership.

Revisor's Note

No substantive change is intended.

[Sections 153.354-153.400 reserved for expansion]

SUBCHAPTER I. DERIVATIVE ACTIONS

Revised Law

Sec. 153.401. RIGHT TO BRING ACTION. A limited partner may bring an action in a court on behalf of the limited partnership to recover a judgment in the limited partnership's favor if:

(1) all general partners with authority to bring the action have refused to bring the action; or

(2) an effort to cause those general partners to bring the action is not likely to succeed. (TRLPA 10.01.)

Source Law

10.01. A limited partner may bring an action in a court of competent jurisdiction in the right of the limited partnership to recover a judgment in the limited partnership's favor if all general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.402. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a limited partner when the action is brought and:

(1) the person must have been a limited partner at the time of the transaction that is the subject of the action; or

(2) the person's status as a limited partner must have arisen by operation of law or under the terms of the partnership agreement from a person who was a limited partner at the time of the transaction. (TRLPA 10.02.)

Source Law

10.02. In a derivative action, the plaintiff must be a limited partner at the time of bringing the action and:

(1) must have been a limited partner at the time of the transaction that is the subject of the action; or

(2) must have had status as a limited partner arise by operation of law or under the terms of the partnership agreement from a person who was a limited partner at the time of the transaction.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.403. PLEADING. In a derivative action, the complaint must contain with particularity:

(1) the effort, if any, of the plaintiff to secure initiation of the action by a general partner; or

(2) the reasons for not making the effort. (TRLPA 10.03.)

Source Law

10.03. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.404. SECURITY FOR EXPENSES OF DEFENDANTS. (a) In a derivative action, the court may require the plaintiff to give security for the reasonable expenses incurred or expected to be incurred by a defendant in the action, including reasonable attorney's fees.

(b) The court may increase or decrease at any time the amount of the security on a showing that the security provided is inadequate or excessive.

(c) If a plaintiff is unable to give security, the plaintiff may file an affidavit in accordance with the Texas Rules of Civil Procedure.

(d) Except as provided by Subsection (c), if a plaintiff fails to give the security within a reasonable time set by the

court, the court shall dismiss the suit without prejudice.

(e) The court, on final judgment for a defendant and on a finding that suit was brought without reasonable cause against the defendant, may require the plaintiff to pay reasonable expenses, including reasonable attorney's fees, to the defendant, regardless of whether security has been required. (TRLPA 10.04.)

Source Law

10.04. In a derivative action, the court having jurisdiction may, in its discretion, require the plaintiff or plaintiffs to give security for the reasonable expenses, including reasonable attorney's fees, incurred or expected to be incurred by one or more of the defendants in defense of the action. The court may, in its discretion at any time, increase or decrease the amount of the security on a showing that the security provided is inadequate or excessive. If the plaintiff is unable to give security, the plaintiff may file an affidavit in accordance with the Texas Rules of Civil Procedure, [See Vernon's Ann.Rules Civ.Proc., rule 145.] and those rules control. If the plaintiff fails to give the security within a reasonable time set by the court, the court, except as provided by the immediately preceding sentence, shall dismiss the suit without prejudice. The court may, on final judgment for one or more defendants and a finding that the suit was brought without reasonable cause against those defendants, require the plaintiff to pay reasonable expenses, including reasonable attorney's fees, to those defendants, whether or not security has been required.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.405. EXPENSES OF PLAINTIFF. If a derivative action is successful, wholly or partly, or if anything is received by the plaintiff because of a judgment, compromise, or settlement of the action or claim constituting a part of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to a party identified by the court the remainder of the proceeds received by the plaintiff. (TRLPA 10.05.)

Source Law

10.05. If a derivative action is successful, in whole or part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of the action or claim constituting a portion of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the parties identified by the court the remainder of the proceeds received by the plaintiff.

Revisor's Note

No substantive change is intended.

[Sections 153.406-153.450 reserved for expansion]

SUBCHAPTER J. CANCELLATION OF CERTIFICATE OF FORMATION

Revised Law

Sec. 153.451. CERTIFICATE OF CANCELLATION. (a) A certificate of formation shall be canceled by filing a certificate of cancellation with the secretary of state in accordance with Chapter 4:

- (1) on the completion of the winding up of the partnership business;
- (2) when there are no limited partners; or
- (3) subject to Subsection (b), on a merger or conversion as provided by Chapter 10.

(b) If a limited partnership formed under this code is not one of the surviving or resulting domestic limited partnerships or other entities in a merger or conversion, the certificate of merger or conversion filed under Chapter 10 is sufficient, without a filing under this section, to cancel the certificate of formation of the nonsurviving limited partnership.

(c) To approve a reinstatement of a limited partnership under Section 11.202, all of the remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the limited partnership. (TRLPA 2.03(a), (c).)

Source Law

(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;
- (2) when there are no limited

partners; or

(3) subject to Subsection (c) of this section, on a merger or conversion as provided by Subsection (b) of Section 2.11 of this Act or Subsection (c) of Section 2.15 of this Act.

. . .

(c) If, in the case of merger or conversion, one or more limited partnerships formed under this Act are not the surviving or resulting domestic limited partnership or partnerships or other entity or entities, the certificate of merger or conversion filed under Subsection (d) of Section 2.11 or Subsection (e) of Section 2.15 of this Act is sufficient, without a filing under this section, to cancel the certificate of limited partnership of those nonsurviving limited partnerships.

Revisor's Note

No substantive change is intended, except that Subsection (c) is added to specify what approval is needed to reinstate a limited partnership under Section 11.202 after filing of the certificate of cancellation.

Revised Law

Sec. 153.452. CONTENTS OF CERTIFICATE OF CANCELLATION. A certificate of cancellation must contain:

- (1) the name of the limited partnership;
- (2) the date of the filing of the partnership's certificate of formation;
- (3) the reason for filing the certificate of cancellation;
- (4) the future effective date or a certain time of cancellation if cancellation is not effective on the filing of the certificate; and
- (5) other proper information as determined by the person filing the certificate of cancellation. (TRLPA 2.03(b).)

Source Law

(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

No substantive change is intended.

[Sections 153.453-153.500 reserved for expansion]

SUBCHAPTER K. SUPPLEMENTAL WINDING UP AND TERMINATION
PROVISIONS

Revised Law

Sec. 153.501. CONTINUATION WITHOUT WINDING UP. (a) The limited partnership may cancel an event requiring winding up as specified in Section 11.051(1) or (3) if, not later than the 90th day after the event, 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.

(b) The limited partnership may revoke an event requiring winding up as specified in Section 11.058(2) if:

(1) 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 partners and those remaining general partners carry on the business; or

(2) not later than one year after the event, all remaining partners, or another group or percentage of partners specified in the partnership agreement:

(A) agree in writing to continue the business of the limited partnership in writing; and

(B) to the extent that they desire or if there are no remaining general partners, agree to the appointment of one or more new general partners.

(c) The appointment of one or more new general partners under Subsection (b)(2)(B) is effective from the date of withdrawal.

(d) To approve a revocation under Section 11.151 by a limited partnership of a voluntary decision to wind up as specified in Section 11.058(1), prior to filing the certificate of cancellation required by Section 153.451, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to revoke the voluntary decision to wind up and continue the business of the limited partnership. (TRLPA 8.01 (part).)

Source Law

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

Section 8.01(3), Texas Revised Limited Partnership Act, provides that the business of a limited partnership may be continued on the occurrence of an event of withdrawal of a general partner under certain circumstances, including if the remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree within 90 days after the event of withdrawal. Section 153.501(b)(2) carries over the same concept, except to extend the time afforded the remaining partners (or group or percentage of partners) to one year. The

short 90-day period was thought necessary before the IRS "check-the-box" rules to retain the partnership's "flow through" tax status. With the adoption of the check-the-box rules, a more flexible period of one year is advisable to prevent an unintended, forced winding up, especially when the partners are unaware that a corporate general partner's certificate of formation has been forfeited or terminated.

Subsection (d) of the revised law is added to specify what approval is needed under Section 11.151 to revoke a voluntary decision to wind up as specified in Section 11.058(1). That approval must be obtained before the certificate of cancellation is filed in accordance with Section 153.451. Subsection (d) clarifies what was implicit in the source law.

Revised Law

Sec. 153.502. WINDING UP PROCEDURES. (a) Except as provided by the partnership agreement, the winding up of the partnership's affairs shall be accomplished by:

- (1) the general partners;
- (2) if there are no general partners, the limited partners or a person chosen by the limited partners; or
- (3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner or a partner's legal representative or transferee, a court, on cause shown, may wind up the limited partnership's affairs 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.

(c) Section 11.052(a)(2) shall not be applicable to a limited partnership. (TRLPA 8.04(a); New.)

Source Law

(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. 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.

Revisor's Note

Texas Revised Limited Partnership Act Section 8.04(a) specifically provides that the winding up of a limited partnership can be accomplished only by general partners who have not wrongfully dissolved the limited partnership. Section 153.502 does not contain such language, since Section 153.155 provides that a person ceases to be a general partner of a limited partnership upon the occurrence of, among other things, such person's withdrawal as a general partner (which includes a wrongful withdrawal).

Section 153.502(c) is new and provides that the notice to claimants requirement specified in Section 11.052(a) does not apply to limited partnerships to be consistent with the Texas Revised Limited Partnership Act, which contains no such notice requirement.

Revised Law

Sec. 153.503. POWERS OF PERSON CONDUCTING WIND UP. (a) After an event requiring the winding up of a limited partnership and until the filing of a certificate of cancellation as provided by Sections 153.451 and 153.452, unless a written partnership agreement provides otherwise, a person winding up the limited partnership's business in the name of and on behalf of the limited partnership may take the actions specified in Sections 11.052 and 11.053.

(b) The acts described by Subsection (a) do not create a liability for a limited partner that did not exist before an action to wind up the business of the partnership was taken. (TRLPA 8.04(b), (c).)

Source Law

(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;

(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;

(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.

(c) The acts described in Subsection (b) of this section do not create liability of limited partners that did not exist before the actions to wind up the affairs of the partnership were taken.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.504. DISPOSITION OF ASSETS. 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 because of the application of Section 153.207 for the payment or the making of reasonable provision for payment to satisfy the liabilities of the limited partnership;

(2) unless otherwise provided by the partnership agreement, to partners and former partners to satisfy the partnership's liability for distributions under Section 153.111 or 153.209; 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 Sections 153.208(a) and (b). (TRLPA 8.05.)

Source Law

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.

Revisor's Note

No substantive change is intended.

[Sections 153.505-153.550 reserved for expansion]

SUBCHAPTER L. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 153.551. RECORDS. (a) A domestic limited partnership shall maintain the following records in its principal office in the United States or make the records available in that office not later than the fifth day after the date on which a written request under Section 153.552(a) is received:

(1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established under the partnership agreement, the names of the partners who are members of each specified class or group;

(2) a copy of:

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

(B) the partnership agreement and certificate of formation; and

(C) all amendments or restatements;

(3) copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) an executed copy of any powers of attorney under which the partnership agreement, certificate of formation, and all amendments or restatements to the agreement and certificate have been executed;

(5) unless contained in the written partnership agreement, a written statement of:

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

(B) the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

(C) the date on which additional contributions are to be made or the date of events requiring additional contributions to be made;

(D) events requiring the limited partnership to be dissolved and its affairs wound up; and

(E) the date on which each partner in the limited partnership became a partner; and

(6) books and records of the accounts of the limited partnership.

(b) A limited partnership shall maintain its records in written form or in another form capable of being converted to written form in a reasonable time.

(c) A limited partnership shall keep in its registered office in this state and make available to a partner on reasonable request the street address of its principal office in the United States in which the records required by this section are maintained. (TRLPA 1.07(a), (b), (c).)

Source Law

(a) A domestic limited partnership shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request under Subsection (d) of this section:

(1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established in or under the partnership agreement, the names of the partners who are members of each specified class or group;

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

(3) a copy of the partnership agreement and certificate of limited partnership, all amendments or restatements, executed copies of any powers of attorney under which the partnership agreement, certificate of limited partnership, and all amendments or restatements to the agreement and certificate have been executed, and copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) unless contained in the written partnership agreement, a written statement of:

(A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

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

(C) events requiring the limited partnership to be dissolved and its affairs wound up; and

(D) the date on which each partner in the limited partnership became a partner; and

(5) books and records of account of the limited partnership.

(b) A limited partnership shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(c) A limited partnership shall keep in its registered office in Texas and make available to partners on reasonable request the street address of its principal United States office in which the records required by this section are maintained or will be available.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.552. EXAMINATION OF RECORDS AND INFORMATION. (a) On written request stating a proper purpose, a partner or an assignee of a partnership interest may examine and copy, in person or through a representative, records required to be kept under Section 153.551 and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(b) The records requested under Subsection (a) may be examined and copied at a reasonable time and at the partner's sole expense.

(c) On written request by a partner or an assignee of a partnership interest, the partnership shall provide to the requesting partner or assignee without charge copies of:

(1) the partnership agreement and certificate of formation and all amendments or restatements; and

(2) any tax return described by Section 153.551(a)(2).

(d) A request made under Subsection (c) must be made to:

(1) the person who is designated to receive the request in the partnership agreement at the address designated in the partnership agreement; or

(2) if there is no designation, a general partner at the partnership's principal office in the United States. (TRLPA 1.07(d), (e).)

Source Law

(d) A partner or an assignee of a partnership interest, on written request stating the purpose, may examine and copy, in person or by the partner's or assignee's representative, at any reasonable time, for

any proper purpose, and at the partner's expense, records required to be kept under this section and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(e) On the written request by any partner or an assignee of a partnership interest made to the person and address designated in the partnership agreement or, if there is no designation, to a general partner at the partnership's principal United States office, the partnership shall provide to the requesting partner or assignee without charge true copies of:

(1) the partnership agreement and certificate of limited partnership and all amendments or restatements; and

(2) any of the tax returns described in Subdivision (2) of Subsection (a) of this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.553. EXECUTION OF CERTAIN FILINGS. (a) Each certificate required by this code to be filed by a limited partnership with the secretary of state shall be executed as follows:

(1) an initial certificate of formation must be signed as provided in Section 3.004(b)(1), except for an initial certificate of formation signed by a person under Section 153.106(1);

(2) a certificate of amendment or restated certificate of formation must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner, unless signed and filed by a person under Section 153.052(b), 153.052(c), or 153.106(1), but the certificate of amendment need not be signed by a withdrawing general partner;

(3) a certificate of cancellation must be signed by all general partners participating in the winding up of the limited partnership's business or, if no general partners are winding up the limited partnership's business, by all nonpartner liquidators or, if the limited partners are winding up the limited partnership's business, by a majority-in-interest of the limited partners;

(4) a certificate of merger filed on behalf of a domestic limited partnership must be signed as provided by Chapter 10;

(5) a certificate filed under Section 10.251 must be signed by the person designated by the court; and

(6) a certificate of correction must be signed by at least one general partner.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact:

(1) is not required to be sworn to, verified, or acknowledged;

(2) is not required to be filed with the secretary of state; and

(3) shall be retained with the partnership records under Sections 153.551 and 153.552.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Section 153.106(2) is an oath or affirmation, under a penalty of perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true. (TRLPA 2.04.)

Source Law

2.04. (a) Each certificate required by this article to be filed with the secretary of state shall be executed in the following manner:

(1) an initial certificate of limited partnership or a certificate of conversion must be signed by all general partners, except for an initial certificate of limited partnership signed and filed by a person under Subdivision (1) of Subsection (a) of Section 3.04 of this Act;

(2) a certificate of amendment or restated certificate must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner, unless signed and filed by a person under Subsection (f) of Section 2.02 of this Act or under Subdivision (1) of Subsection (a) of Section 3.04 of this Act, but the certificate of amendment need not be signed by a withdrawing general partner;

(3) a certificate of cancellation must be signed by all general partners participating in the winding up of the limited partnership's affairs or, if no general partners are winding up the limited partnership's affairs, then by all non-partner liquidators, or, if the limited partners are winding up the limited partnership's affairs, by a majority in interest of the limited partners;

(4) a certificate of merger filed on behalf of a domestic limited partnership must be signed as provided in Subsection (d), Section 2.11 of this Act;

(5) a certificate filed under Section 2.06 of this Act must be signed by the person designated by the court; and

(6) a certificate of correction must be signed by at least one general partner.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact need not be sworn to, verified, or acknowledged, and need not be filed with the secretary of state, but shall be retained with the partnership records under Section 1.07 of this Act.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Subdivision (2) of Subsection (a) of Section 3.04 of this Act constitutes an oath or affirmation, under the penalties for perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.554. EXECUTION, AMENDMENT, OR CANCELLATION BY JUDICIAL ORDER. (a) If a person fails or refuses to execute or file a certificate as required by this chapter or Title 1 or to execute a partnership agreement, another person adversely

affected by the failure or refusal may petition a court to direct the execution or filing of the certificate or the execution of the partnership agreement, as appropriate.

(b) If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to execute or file the certificate, the court shall order the secretary of state to record an appropriate certificate.

(c) The judicial remedy described by Subsection (b) is not a limit on the rights of a person to file a written statement under Section 153.106(2).

(d) If the court finds that the partnership agreement should be executed and that a person required to execute the partnership agreement has failed or refused to execute the agreement, the court shall enter an order granting appropriate relief.

(e) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable attorney's fees. (TRLPA 2.05.)

Source Law

2.05. (a) If a person required by this Act to execute or file a certificate fails or refuses to do so, another person adversely affected by that failure or refusal may petition a court of competent jurisdiction to direct the execution or filing of the certificate. If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to do so, the court shall order the secretary of state to record an appropriate certificate. This judicial remedy is not a limit on the rights of a person to file a written statement under Subdivision (2) of Subsection (a) of Section 3.04 of this Act.

(b) If a person required to execute a partnership agreement fails or refuses to do so, another person adversely affected by that failure or refusal may petition a court of competent jurisdiction to direct the execution of the partnership agreement. If the court finds that the partnership agreement should be executed and that a person required to do so has failed or refused to do so, the court shall enter an

order granting appropriate relief.

(c) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable attorney's fees.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 153.555. PERMITTED TRANSFER IN CONNECTION WITH RACETRACK LICENSE. The following transfer relating to a limited partnership is not a prohibited transfer that violates Section 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes):

(1) a transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership; or

(2) a transfer by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, under Subchapter D, Chapter 431, Transportation Code. (TRLPA 7.06.)

Source Law

7.06. A transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership, or by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, pursuant to Section 4A, Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes), is not a prohibited transfer in violation of Section 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Revisor's Note

No substantive change is intended.

CHAPTER 154. PROVISIONS APPLICABLE TO BOTH GENERAL
AND LIMITED PARTNERSHIPS

SUBCHAPTER A. PARTNERSHIP INTERESTS

Revised Law

Sec. 154.001. NATURE OF PARTNER'S PARTNERSHIP INTEREST. (a)

A partner's partnership interest is personal property for all purposes.

(b) A partner's partnership interest may be community property under applicable law.

(c) A partner is not a co-owner of partnership property.
(TRPA 5.01, 5.02(a); TRLPA 7.01.)

Source Law

[TRPA]

5.01. A partner is not a co-owner of partnership property and does not have an interest that can be transferred, either voluntarily or involuntarily, in partnership property.

[TRPA 5.02]

(a) Personal Property. A partner's partnership interest is personal property for all purposes. A partner's partnership interest may be community property under applicable law.

[TRLPA]

7.01. A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 154.002. TRANSFER OF INTEREST IN PARTNERSHIP PROPERTY PROHIBITED. A partner does not have an interest that can be transferred, voluntarily or involuntarily, in partnership property. (TRPA 5.01; TRLPA 7.01.)

Source Law

[TRPA]

5.01. A partner is not a co-owner of partnership property and does not have an interest that can be transferred, either voluntarily or involuntarily, in partnership property.

[TRLPA]

7.01. A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Revisor's Note

No substantive change is intended.

[Sections 154.003-154.100 reserved for expansion]

SUBCHAPTER B. PARTNERSHIP AGREEMENT

Revised Law

Sec. 154.101. CLASS OR GROUP OF PARTNERS. (a) A written partnership agreement may establish or provide for the future creation of additional classes or groups of one or more partners that have certain express relative rights, powers, and duties, including voting rights. The future creation of additional classes or groups may be expressed in the partnership agreement or at the time of creation of the class or group.

(b) The rights, powers, or duties of a class or group of partners may be senior to those partners of an existing class or group. (TRPA 4.01(1); TRLPA 3.02(a), 4.05(a).)

Source Law

[TRPA 4.01]

(1) Classes or Groups of Partners. A written partnership agreement may establish classes or groups of one or more partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of partners.

[TRLPA 3.02]

(a) A written partnership agreement may establish classes or groups of one or more limited partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of limited partners having certain relative rights, powers, or duties, including voting rights, expressed either in the partnership agreement or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of limited

partners.

[TRLPA 4.05]

(a) A written partnership agreement may establish classes or groups of one or more general partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of general partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties may be senior to those of one or more existing classes or groups of general partners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 154.102. PROVISIONS RELATING TO VOTING. A written partnership agreement that grants or provides for granting a right to vote to a partner may contain a provision relating to:

- (1) giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by the partners;
- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) other matters relating to the exercise of the right to vote. (TRPA 4.01(m); TRLPA 3.02(b), 4.05(b).)

Source Law

[TRPA 4.01]

(m) Voting Rights. A written partnership agreement that grants or provides for granting to a partner a right to vote may contain provisions relating to:

- (1) giving notice of the time, place, or purposes of a meeting at which a matter is to be voted on by the partners;
- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;

(5) quorum requirements;
(6) voting in person or by proxy;
or
(7) any other matter relating to
the exercise of the right to vote.

[TRLPA 3.02]

(b) A written partnership agreement that grants or makes provision for granting to any of its limited partners a right to vote may contain provisions relating to:

(1) notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any limited partners;
(2) waiver of a notice;
(3) action by consent without a meeting;
(4) the establishment of a record date;
(5) quorum requirements;
(6) voting in person or by proxy;
or
(7) any other matter relating to the exercise of the right to vote.

[TRLPA 4.05]

(b) A written partnership agreement that grants or makes provision for granting to any of its general partners a right to vote may contain provisions relating to giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any general partners, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 154.103. NOTICE OF ACTION BY CONSENT WITHOUT A MEETING. (a) Prompt notice of the taking of an action under a partnership agreement that may be taken without a meeting by consent of fewer than all of the partners shall be given to a partner who has not given written consent to the action.

(b) For purposes of this section, the "taking of an action"

includes:

- (1) amending the partnership agreement; or
- (2) creating under the partnership agreement a class of partners that did not previously exist. (TRPA 4.01(n); TRLPA 3.02(c), (d).)

Source Law

[TRPA 4.01]

(n) Notice of Nonunanimous Action.

(1) Prompt notice of the taking of an action under an agreement that requires consent of fewer than all of the partners and that may be taken without a meeting shall be given to the partners who have not consented in writing to the action.

(2) For the purposes of this section, the taking of an action includes amending the partnership agreement or creating, under provisions of the partnership agreement, a class of partner that did not previously exist.

[TRLPA 3.02]

(c) Prompt notice of the taking of an action under an agreement that requires less than unanimous written consent of the limited partners and that may be taken without a meeting shall be given to the limited partners who have not consented in writing to the taking of the action.

(d) For the purposes of this section, the taking of an action includes amending the limited partnership agreement or creating, under provisions of the partnership agreement, a class of limited partnership interests that was not previously outstanding.

Revisor's Note

No substantive change is intended.

[Sections 154.104-154.200 reserved for expansion]

SUBCHAPTER C. PARTNERSHIP TRANSACTIONS AND RELATIONSHIPS

Revised Law

Sec. 154.201. BUSINESS TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the partnership. Subject to other applicable law, a partner has the same rights and obligations with respect to those

matters as a person who is not a partner. (TRPA 4.01(k);
TRLPA 1.10.)

Source Law

[TRPA 4.01]

(k) Partner Transaction of Business with Partnership. A partner may lend money to or transact other business with a partnership and, subject to other applicable law, has the same rights and obligations with respect to that matter as a person who is not a partner.

[TRLPA]

1.10. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to those matters as a person who is not a partner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 154.202. EFFECT OF PARTNER CHANGE ON RELATIONSHIP BETWEEN PARTNERSHIP AND CREDITORS. The relationships between a partnership and its creditors are not affected by the:

- (1) withdrawal of a partner; or
- (2) addition of a new partner. (TRPA 2.06(c).)

Source Law

(c) Effect of Withdrawal on Relation Between Creditor and Partnership. Relationships between a partnership and its creditors are not affected by the withdrawal of a partner or by the addition of a new partner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 154.203. DISTRIBUTIONS IN KIND. (a) Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, is not entitled to demand or receive from a partnership a distribution in any form other than cash.

(b) Except as provided by the partnership agreement, a

partner may not be compelled to accept a disproportionate distribution of an asset in kind from a partnership to the extent that the percentage portion of assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the partnership. (TRPA 4.02; TRLPA 6.05.)

Source Law

[TRPA]

4.02. A partner does not have a right to receive, and may not be required to accept, a distribution in kind.

[TRLPA]

6.05. Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, may not demand or receive a distribution from a limited partnership in any form other than cash. Except as otherwise provided by the partnership agreement, a partner may not be compelled to accept a disproportionate distribution of an asset in kind from a limited partnership to the extent that the percentage portion of any assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the limited partnership.

Revisor's Note

No substantive change is intended.

TITLE 5. REAL ESTATE INVESTMENT TRUSTS

CHAPTER 200. REAL ESTATE INVESTMENT TRUSTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 200.001. DEFINITION. In this chapter, "real estate investment trust" means an unincorporated trust:

(1) formed by one or more trust managers under this chapter and Chapter 3; and

(2) managed under this chapter. (TREITA 2.10.)

Source Law

2.10. A real estate investment trust is an unincorporated trust formed by one or more trust managers under Section 3.10 of this Act and managed in accordance with this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.002. APPLICABILITY OF CHAPTER. (a) The provisions of Chapters 20 and 21 govern a matter to the extent that this chapter or Title 1 does not govern the matter.

(b) An unincorporated trust that does not meet the requirements of this chapter is an unincorporated association. (TREITA 28.10(A) (part), (B).)

Source Law

(A) In any case not provided for in this Act, analogous provisions of the Texas Business Corporation Act, and the case law construing that Act, shall govern; provided, however, that

(B) Any unincorporated trust which does not meet the requirements of this Act shall be treated as an unincorporated association pursuant to Chapter 2 of this Title 105.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.003. CONFLICT WITH OTHER LAW. In case of conflict between this chapter and Chapters 20 and 21, this chapter controls. Chapters 20 and 21 do not control over this chapter merely because a provision of Chapter 20 or 21 is more or less extensive, restrictive, or detailed than a similar provision of this chapter. (TREITA 28.10(A) (part).)

Source Law

(A) . . . in any case where a provision of this Act conflicts with a provision of the Texas Business Corporation Act, the provisions of this Act control. Nothing in this Section shall be construed to cause a provision of the Texas Business Corporation Act to control over a similar provision of this Act on the grounds that the Texas Business Corporation Act provision is more or less extensive, restrictive, or detailed.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.004. ULTRA VIRES ACTS. (a) Lack of capacity of a

real estate investment trust may not be the basis of any claim or defense at law or in equity.

(b) An act of a real estate investment trust or a transfer of property by or to a real estate investment trust is not invalid because the act or transfer was:

(1) beyond the scope of the purpose or purposes of the real estate investment trust as expressed in the real estate investment trust's certificate of formation; or

(2) inconsistent with a limitation on the authority of an officer or trust manager to exercise a statutory power of the real estate investment trust, as that limitation is expressed in the real estate investment trust's certificate of formation.

(c) The fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the real estate investment trust or is inconsistent with an expressed limitation on the authority of an officer or trust manager may be asserted in a proceeding:

(1) by a shareholder against the real estate investment trust to enjoin the performance of an act or the transfer of property by or to the real estate investment trust; or

(2) by the real estate investment trust, acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an officer or trust manager or former officer or trust manager of the real estate investment trust for exceeding that person's authority.

(d) If the unauthorized act or transfer sought to be enjoined under Subsection (c)(1) is being or is to be performed or made under a contract to which the real estate investment trust is a party and if each party to the contract is a party to the proceeding, the court may set aside and enjoin the performance of the contract. The court may award to the real estate investment trust or to another party to the contract, as appropriate, compensation for loss or damage resulting from the action of the court in setting aside and enjoining the performance of the contract, excluding loss of anticipated profits. (TREITA 3.20.)

Source Law

3.20. (A) Lack of capacity of a real estate investment trust may never be the basis of a claim or defense at law or in equity.

(B) An act of a real estate investment trust or a conveyance or transfer of real or personal property to or by a real estate investment trust may not be declared invalid

because the act, conveyance, or transfer was beyond the scope of the purpose or purposes of the real estate investment trust as expressed in the declaration of trust or because there are limitations expressed in the declaration of trust on the authority of the officers and trust managers of the real estate investment trust to exercise any statutory power of the real estate investment trust.

(C) The fact that an act, conveyance, or transfer was or is beyond the scope of the purpose or purposes of the real estate investment trust as expressed in its declaration of trust or inconsistent with any expressed limitations of authority may be asserted:

(1) In a proceeding by a shareholder against the real estate investment trust to enjoin an act or acts or the transfer of real or personal property by or to the real estate investment trust. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the real estate investment trust is a party, the court may set aside and enjoin the performance of the contract, if all of the parties to the contract are parties to the proceeding and if the court considers the action to be equitable. If the court sets aside and enjoins the performance of the contract, the court may allow compensation to the real estate investment trust or to the other parties to the contract for the loss or damage sustained as a result of the court's action. The court may not award anticipated profits to be derived from the performance of the contract as a part of loss or damage sustained.

(2) In a proceeding by the real estate investment trust against the incumbent or former officers or trust managers of the real estate investment trust for exceeding their authority, whether the real estate investment trust is acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a

representative suit.

Revisor's Note

The revised law omits the term "real and personal" property because the term "property" is sufficient. The revised law omits "conveyance" because it is redundant with "transfer." The revised law omits language stating that a court must consider an action equitable because a decision to enjoin an act is an equitable remedy.

Revised Law

Sec. 200.005. SUPPLEMENTARY POWERS OF REAL ESTATE INVESTMENT TRUST. (a) Subject to Section 2.113(a) and in addition to the powers specified in Section 2.101, a real estate investment trust may engage in activities mandated or authorized by:

(1) provisions of the Internal Revenue Code that are related to or govern real estate investment trusts; and

(2) regulations adopted under the Internal Revenue Code.

(b) This section does not authorize a real estate investment trust or an officer or trust manager of a real estate investment trust to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the real estate investment trust contained in:

(1) the trust's certificate of formation;

(2) this code; or

(3) another law of this state. (TREITA 6.10(A) (part), (B) (part).)

Source Law

(A) . . .

(19) To engage in activities that are mandated or authorized by sections of the Internal Revenue Code of 1986, or any successor statute, that relate to or govern real estate investment trusts or the regulations adopted under that law.

(B) Nothing in this Section grants any authority to officers or trust manager(s) of a real estate investment trust to perform any of the foregoing powers inconsistent with the limitations on any of the same which may be expressly set forth in this Act or in the declaration of trust or in any other laws of this state. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.006. REQUIREMENT THAT FILING INSTRUMENT BE SIGNED BY OFFICER. Unless otherwise provided by this chapter, a filing instrument of a real estate investment trust may be signed by an officer of the real estate investment trust. (TREITA 22.40(A) (part), 22.70(D) (part), 23.40(A) (part).)

Source Law

[22.40]

(A) An officer shall execute the articles of amendment on behalf of the real estate investment trust. . . .

[22.70]

(D) An officer shall execute the restated declaration of trust on behalf of the real estate investment trust. . . .

[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

Revisor's Note

No substantive change is intended. The revised law combines separate provisions stating that an officer of a real estate investment trust shall execute certain documents, including articles of amendment, articles of merger or exchange, and a restated declaration of trust, into one section, by use of the new term "filing instrument" defined in Chapter 1.

[Sections 200.007-200.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Revised Law

Sec. 200.051. DECLARATION OF TRUST. For purposes of this code, the certificate of formation of a real estate investment trust is a declaration of trust. The certificate of formation may be titled "declaration of trust" or "certificate of formation." (New.)

Revisor's Note

The revised law refers to all filing instruments that create entities by the generic term "certificate of formation." Because a certificate of formation for a real estate investment trust is in fact a "declaration of trust," it may still be referred to by this term under the revised law as the term is used in the Texas Real Estate Investment Trust Act.

Revised Law

Sec. 200.052. NO PROPERTY RIGHT IN CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust does not have a vested property right resulting from the certificate of formation, including a provision in the certificate of formation relating to the management, control, capital structure, dividend entitlement, purpose, or duration of the real estate investment trust. (TREITA 22.10(B).)

Source Law

(B) A shareholder of a real estate investment trust does not have a vested property right resulting from any provision in the declaration of trust, including a provision relating to management, control, capital structure, dividend entitlement, or purpose or duration of the real estate investment trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.053. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION. (a) To adopt an amendment to the certificate of formation of a real estate investment trust as provided by Subchapter B, Chapter 3, the trust managers shall:

(1) adopt a resolution stating the proposed amendment; and

(2) follow the procedures prescribed by Sections 200.054-200.056.

(b) The resolution may incorporate the proposed amendment

in a restated certificate of formation that complies with Section 3.059. (TREITA 22.20.)

Source Law

22.20. (A) The declaration of trust may be amended in the following manner:

(1) The trust managers shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that the amendment be submitted to a vote at an annual or special meeting of shareholders. If no shares have been issued, the amendment shall be adopted by resolution of the trust managers and the provisions for adoption by shareholders may not apply. The resolution may incorporate the proposed amendment in a restated declaration of trust that contains a statement that except for the designated amendment the restated declaration of trust correctly sets forth without change the corresponding provisions of the original declaration of trust and that the restated declaration of trust together with the designated amendment supersedes the original declaration of trust and all amendments to the original declaration of trust.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendment shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this Act for giving notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the summary of the changes may be included in the notice of the annual meeting.

(3) At the meeting, a vote of the shareholders entitled to vote on the proposed amendment shall be taken on the proposed amendment. The proposed amendment is adopted on receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on the proposed amendment unless any class or series of shares is entitled to vote on the proposed amendment as a class, in which case the proposed amendment shall be adopted on

receiving the affirmative vote of the holders of at least two-thirds of the shares within each class or series of outstanding shares entitled to vote on the proposed amendment as a class and of at least two-thirds of the total outstanding shares entitled to vote on the proposed amendment.

(B) Any number of amendments may be submitted to and voted on by the shareholders at one meeting.

Revisor's Note

The revised law separates the provisions contained in Section 22.20, Texas Real Estate Investment Trust Act, into Sections 200.053-200.056. No substantive changes are intended.

Revised Law

Sec. 200.054. ADOPTION OF AMENDMENT BY TRUST MANAGERS. If a real estate investment trust does not have any issued and outstanding shares, the trust managers may adopt a proposed amendment to the real estate investment trust's certificate of formation by resolution without shareholder approval. (TREITA 22.20(A) (part).)

Source Law

(A) The declaration of trust may be amended in the following manner:

(1) The trust managers shall adopt a resolution setting forth the proposed amendment and If no shares have been issued, the amendment shall be adopted by resolution of the trust managers and the provisions for adoption by shareholders may not apply. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.055. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a real estate investment trust has issued and outstanding shares:

(1) a resolution described by Section 200.053 must also direct that the proposed amendment be submitted to a vote of the shareholders at a meeting; and

(2) the shareholders must approve the proposed amendment in the manner provided by Section 200.056. (TREITA 22.20(A) (part).)

Source Law

(A) The declaration of trust may be amended in the following manner:

(1) The trust managers shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that the amendment be submitted to a vote at an annual or special meeting of shareholders. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.056. NOTICE OF AND MEETING TO CONSIDER PROPOSED AMENDMENT. (a) Each shareholder of record entitled to vote shall be given written notice containing the proposed amendment or a summary of the changes to be effected within the time and in the manner provided by this code for giving notice of meetings to shareholders. If the proposed amendment is to be considered at an annual meeting, the proposed amendment or summary may be included in the notice required to be provided for an annual meeting.

(b) At the meeting, the proposed amendment shall be adopted only on receiving the affirmative vote of shareholders entitled to vote required by Section 200.261.

(c) An unlimited number of amendments may be submitted for adoption by the shareholders at a meeting. (TREITA 22.20(A) (part), (B).)

Source Law

(A) . . .

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendment shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this Act for giving notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the summary of the changes may be included in the notice of the annual meeting.

(3) At the meeting, a vote of the shareholders entitled to vote on the proposed amendment shall be taken on the proposed amendment. The proposed amendment is adopted on receiving the affirmative vote of the holders of at least two-thirds of the

outstanding shares entitled to vote on the proposed amendment

(B) Any number of amendments may be submitted to and voted on by the shareholders at one meeting.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.057. ADOPTION OF RESTATED CERTIFICATE OF FORMATION. (a) A real estate investment trust may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedures to amend its certificate of formation under Sections 200.053-200.056, except that shareholder approval is not required if an amendment is not adopted.

(b) If shares of the real estate investment trust have not been issued and the restated certificate of formation is adopted by the trust managers, the majority of the trust managers may sign the restated certificate of formation on behalf of the real estate investment trust. (TREITA 22.70(A) (part), (D) (part).)

Source Law

(A) A real estate investment trust, by following the procedure to amend the declaration of trust provided by this Act, except that no shareholder approval shall be required where no amendment is made, may authorize, execute, and file a restated declaration of trust

(D) . . . If no shares have been issued and the restated declaration of trust is adopted by the trust managers, a majority of the trust managers may execute the restated declaration of trust on behalf of the real estate investment trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.058. BYLAWS. (a) The trust managers of a real estate investment trust shall adopt initial bylaws.

(b) The bylaws may contain provisions for the regulation and management of the affairs of the real estate investment trust that are consistent with law and the real estate investment trust's certificate of formation.

(c) The trust managers of a real estate investment trust

may amend or repeal bylaws or adopt new bylaws unless:

(1) the real estate investment trust's certificate of formation or this chapter wholly or partly reserves the power exclusively to the real estate investment trust's shareholders; or

(2) in amending, repealing, or adopting a bylaw, the shareholders expressly provide that the trust managers may not amend, repeal, or readopt that bylaw. (TREITA 9.10(A), (B).)

Source Law

(A) The initial bylaws of the real estate investment trust shall be adopted by the trust manager(s). The bylaws may contain any provisions for the regulation and management of the affairs of the real estate investment trust not inconsistent with law or the declaration of trust.

(B) The trust manager(s) of a real estate investment trust may amend or repeal the real estate investment trust's bylaws, or adopt new bylaws, unless:

(1) the declaration of trust or this Act reserves the power exclusively to the shareholders in whole or part; or

(2) the shareholders in amending, repealing, or adopting a particular bylaw provision expressly provide that the trust manager(s) may not amend or repeal that bylaw.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.059. DUAL AUTHORITY. Unless the certificate of formation or a bylaw adopted by the shareholders provides otherwise as to all or a part of a real estate investment trust's bylaws, the shareholders of a real estate investment trust may amend, repeal, or adopt the bylaws of the real estate investment trust even if the bylaws may also be amended, repealed, or adopted by the trust managers of the real estate investment trust. (TREITA 9.10(C).)

Source Law

(C) Unless the declaration of trust or a bylaw adopted by the shareholders provides otherwise as to all or some portion of a real estate investment trust's bylaws, a real estate investment trust's shareholders may

amend, repeal, or adopt the real estate investment trust's bylaws even though the bylaws may also be amended, repealed, or adopted by its trust manager(s).

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.060. ORGANIZATION MEETING. (a) After the real estate investment trust has been formed, the initial trust managers of the real estate investment trust shall hold an organization meeting, at the call of a majority of those trust managers, for the purpose of adopting bylaws, electing officers, and transacting other business.

(b) Not later than the third day before the date of the meeting, the initial trust managers calling the meeting shall send notice of the time and place of the meeting to the other initial trust managers named in the certificate of formation. (TREITA 3.10(C).)

Source Law

(C) After the real estate investment trust has been formed, an organizational meeting of the initial trust managers named in the declaration of trust shall be held, at the call of a majority of the trust managers named in the declaration of trust, to adopt bylaws, elect officers, and transact other business that may come before the trust managers at the meeting. The trust managers who call the meeting shall give each trust manager named in the declaration of trust at least three days' notice of the meeting by mail. The notice must state the time and place of the meeting.

Revisor's Note

No substantive change is intended.

[Sections 200.061-200.100 reserved for expansion]

SUBCHAPTER C. SHARES

Revised Law

Sec. 200.101. NUMBER. A real estate investment trust may issue the number of shares stated in the real estate investment trust's certificate of formation. (TREITA 3.10(A) (part).)

Source Law

(A) . . .

(7) The aggregate number of shares

of beneficial interest the real estate investment trust shall have authority to issue and the par value to be received by the real estate investment trust for the issuance of each of such shares. . . .

Revisor's Note

The revised law expands on provisions under the Texas Real Estate Investment Trust Act and confirms that a real estate investment trust is limited to issuing the number of shares authorized by its certificate of formation.

Revised Law

Sec. 200.102. CLASSIFICATION OF SHARES. A real estate investment trust may provide in the real estate investment trust's certificate of formation:

(1) that a specified class of shares is preferred over another class of shares as to its distributive share of the assets on voluntary or involuntary liquidation of the real estate investment trust;

(2) the amount of a preference described by Subdivision (1);

(3) that a specified class of shares may be redeemed at the option of the real estate investment trust or of the holders of the shares;

(4) the terms and conditions of a redemption of shares described by Subdivision (3), including the time and price of redemption;

(5) that a specified class of shares may be converted into shares of one or more other classes;

(6) the terms and conditions of a conversion described by Subdivision (5);

(7) that a holder of a specified security issued or to be issued by the real estate investment trust has voting or other rights authorized by law; and

(8) for other preferences, rights, restrictions, including restrictions on transferability, and qualifications consistent with law. (TREITA 3.30(A) (part).)

Source Law

(A) A real estate investment trust may provide by its declaration of trust:

(1) that any specified class of shares is preferred over another class as to its distributive share of the assets on voluntary or involuntary liquidation of the real estate investment trust and the amount

of the preference;

(2) that any specified class of shares may be redeemed at the option of the real estate investment trust or of the holders of the shares and the terms and conditions of redemption, including the time and price of redemption;

(3) that any specified class of shares is convertible into shares of one or more other classes and the terms and conditions of conversion;

(4) that the holders of any specified securities issued or to be issued by the real estate investment trust have any voting or other rights which, by law, are or may be conferred on shareholders;

(5) for any other preferences, rights, restrictions, including restrictions on transferability, and qualifications not inconsistent with law; provided, however, that

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.103. CLASSES OF SHARES ESTABLISHED BY TRUST MANAGERS. (a) A real estate investment trust may provide in the real estate investment trust's certificate of formation that the trust managers may classify or reclassify any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the shares.

(b) Before issuing shares, the trust managers who perform as authorized by the certificate of formation an action described by Subsection (a) must file with the county clerk of the county of the principal place of business of the real estate investment trust a statement of designation that contains:

(1) a description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, as set or changed by the trust managers; and

(2) a statement that the shares have been classified or reclassified by the trust managers as authorized by the certificate of formation. (TREITA 3.30(A) (part), (B).)

Source Law

(A) A real estate investment trust may provide by its declaration of trust:

. . .

(6) that the trust manager(s) may classify or reclassify any unissued shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the shares.

(B) If, under a power contained in the declaration of trust, the trust manager(s) classifies or reclassifies any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption, the trust manager(s), before issuing any of the shares, shall file a statement of designation for record with the county clerk of the county of the principal place of business of the real estate investment trust, which shall include:

(1) A description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, as set or changed by the trust manager(s); and

(2) A statement that the shares have been classified or reclassified by the trust manager(s) under the authority contained in the declaration of trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.104. ISSUANCE OF SHARES. (a) A real estate investment trust may issue shares for consideration if authorized by the trust managers.

(b) Shares may not be issued until the consideration, determined in accordance with this subchapter, has been paid to the real estate investment trust or to another entity of which all of the outstanding ownership interests are directly or indirectly owned by the real estate investment trust. When the consideration is paid:

- (1) the shares are considered to be issued;
- (2) the shareholder entitled to receive the shares is a shareholder with respect to the shares; and
- (3) the shares are considered fully paid and nonassessable. (TREITA 7.30(A) (part), (B) (part).)

Source Law

(A) Shares may be issued for such consideration as shall be fixed from time to time by the trust manager(s). . . .

(B) . . . Shares may not be issued until the full amount of the consideration has been paid. When such consideration shall have been paid to the real estate investment trust or to another entity of which all of the outstanding shares of each class of capital stock are owned, directly or indirectly, by the real estate investment trust, the shares shall be deemed to have been issued, and the shareholder entitled to receive such issue, shall be a shareholder with respect to such shares, and the shares shall be considered fully paid and non-assessable.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.105. TYPES OF CONSIDERATION FOR ISSUANCE OF SHARES. Shares with or without par value may be issued by a real estate investment trust for the following types of consideration:

- (1) a tangible or intangible benefit to the real estate investment trust;
- (2) cash;
- (3) a promissory note;
- (4) services performed or a contract for services to be performed;
- (5) a security of the real estate investment trust or any other organization; and
- (6) any other property of any kind or nature. (TREITA 7.30(B) (part).)

Source Law

(B) The consideration paid for the issuance of shares shall consist of any tangible or intangible benefit to the real estate investment trust, including cash, promissory notes, services performed,

contracts for services to be performed, or other securities of the real estate investment trust. . . .

Revisor's Note

The revised law adds the language "any other property of any kind or nature" to clarify that the list of types of consideration is not all-inclusive. The same change was made in Section 21.159 of the revised law for for-profit corporations.

Revised Law

Sec. 200.106. DETERMINATION OF CONSIDERATION FOR SHARES. Consideration to be received by a real estate investment trust for shares shall be determined by the trust managers. (TREITA 7.30(A) (part).)

Source Law

(A) Shares may be issued for such consideration as shall be fixed from time to time by the trust manager(s). . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.107. AMOUNT OF CONSIDERATION FOR ISSUANCE OF SHARES WITH PAR VALUE. Consideration to be received by a real estate investment trust for the issuance of shares with par value may not be less than the par value of the shares. (TREITA 7.30(A) (part).)

Source Law

(A) . . . If the shares have a par value, the consideration for the shares may not be less than the par value.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.108. VALUE OF CONSIDERATION. In the absence of fraud in the transaction, the judgment of the trust managers is conclusive in determining the value of the consideration received for the shares. (TREITA 7.30(C).)

Source Law

(C) In the absence of fraud in the transaction, the judgment of the trust manager(s) or the shareholders, as the case

may be, as to the value of the consideration received for shares shall be conclusive.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.109. LIABILITY OF ASSIGNEE OR TRANSFEREE. An assignee or transferee of certificated shares, uncertificated shares, or a subscription for shares in good faith and without knowledge that full consideration for the shares or subscription has not been paid may not be held personally liable to the real estate investment trust or a creditor of the real estate investment trust for an unpaid portion of the consideration. (TREITA 8.10(C).)

Source Law

(C) Any person becoming an assignee or transferee of certificated shares or of uncertificated shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid to the real estate investment trust shall not be personally liable to the real estate investment trust or its creditors for any unpaid portion of such consideration.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.110. SUBSCRIPTIONS. (a) A real estate investment trust may accept a subscription by notifying the subscriber in writing.

(b) A subscription to purchase shares in a real estate investment trust that is in the process of being formed is irrevocable for six months if the subscription is in writing and signed by the subscriber unless the subscription provides for a longer or shorter period or all of the other subscribers agree to the revocation of the subscription.

(c) A written subscription entered into after the real estate investment trust is formed is a contract between the subscriber and the real estate investment trust. (TREITA 7.10(A), (C).)

Source Law

(A) Unless otherwise provided in the subscription, a subscription for shares of a real estate investment trust to be organized

may not be revoked within six months, except with the consent of all other subscribers.

(C) In the case of an existing real estate investment trust, acceptance of a subscription for shares is effected by a resolution of acceptance by the trust managers or by a written memorandum of acceptance of the subscription for shares executed by a person authorized to execute the memorandum by the trust managers and delivered to the subscriber or the subscriber's assignee.

Revisor's Note

The provisions of Section 7.10, Texas Real Estate Investment Trust Act, relating to subscriptions for shares were based on the similar provisions of Article 2.14, Texas Business Corporation Act. These provisions have become antiquated and are rarely invoked. Sections 200.110-200.112 contain revised provisions that modernize the law relating to subscriptions and are based primarily on the subscription provisions contained in the Revised Model Business Corporation Act. These provisions are parallel to the corporate provisions in Sections 21.165-21.167. For further information regarding the changes effected by these provisions, see the discussion relating to Sections 21.165-21.167.

Revised Law

Sec. 200.111. PREFORMATION SUBSCRIPTION. (a) A real estate investment trust may determine the payment terms of a preformation subscription unless the payment terms are specified by the subscription. The payment terms may authorize payment in full on acceptance or by installments.

(b) Unless the subscription provides otherwise, a real estate investment trust shall make calls placed to all subscribers of similar interests for payment on preformation subscriptions uniform as far as practicable.

(c) After the real estate investment trust is formed, if a subscriber fails to pay any installment or call when due, the real estate investment trust may:

(1) collect in the same manner as any other debt the amount due on any unpaid preformation subscription; or

(2) forfeit the subscription if the installment or

call remains unpaid for 20 days after written notice to the subscriber.

(d) Although the forfeiture of a subscription terminates all the rights and obligations of the subscriber, the real estate investment trust may retain any amount previously paid on the subscription. (TREITA 7.10(D).)

Source Law

(D) Subscriptions for shares, whether made before or after the organization of a real estate investment trust, shall be paid in full at a time determined by the trust managers or in installments and at times determined by the trust managers. Any call made by the trust managers for payment on subscriptions must be uniform for all shares of the same class or all shares of the same series, as the case may be. In case of default in the payment of any installment or call when the payment is due, the real estate investment trust may proceed to collect the amount due in the same manner as the real estate investment trust would collect any debt due the real estate investment trust. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but a penalty working a forfeiture of a subscription, or of the amounts paid on the subscription, may not be declared against any subscriber unless the amount due on the subscription remains unpaid on the 21st day after the day on which written demand is made for payment. If mailed, the written demand is considered to be made when deposited in the United States mail in a sealed envelope, with prepaid postage, addressed to the subscriber at the subscriber's last post-office address known to the real estate investment trust. If the demand remains unsatisfied for the 20-day period, and if the real estate investment trust is solvent, the real estate investment trust may declare the subscription to be forfeited. The effect of the declaration of forfeiture is to terminate all the rights and obligations of the subscriber as a subscriber of shares.

Revisor's Note

See the revisor's note to Section
200.110.

Revised Law

Sec. 200.112. COMMITMENT IN CONNECTION WITH PURCHASE OF SHARES. (a) A person who contemplates the acquisition of shares in a real estate investment trust may commit to act in a specified manner with respect to the shares after the acquisition, including the voting of the shares or the retention or disposition of the shares. To be binding, the commitment must be in writing and be signed by the person acquiring the shares.

(b) A written commitment entered into under Subsection (a) is a contract between the shareholder and the real estate investment trust. (New.)

Revisor's Note

See the revisor's note to Section
200.110.

Revised Law

Sec. 200.113. SUPPLEMENTAL REQUIRED RECORDS. In addition to the books and records required to be kept under Section 3.151, a real estate investment trust must keep at its principal office or place of business, or at the office of its transfer agent or registrar, a record of the number of shares held by each shareholder. (TREITA 18.10(A) (part).)

Source Law

(A) Each real estate investment trust . . . shall keep at its principal office or place of business a record of its shareholders . . . and the number of shares held by each.

Revisor's Note

No substantive change is intended.

[Sections 200.114-200.150 reserved for expansion]

SUBCHAPTER D. SHAREHOLDER RIGHTS AND RESTRICTIONS

Revised Law

Sec. 200.151. REGISTERED HOLDERS AS OWNERS. Except as otherwise provided by this code and subject to Chapter 8, Business & Commerce Code, a real estate investment trust may consider the person registered as the owner of a share in the share transfer records of the real estate investment trust at a particular time, including a record date set under Section 6.102, as the owner of that share at that time for purposes of:

- (1) voting the share;
- (2) receiving distributions on the share;
- (3) transferring the share;
- (4) receiving notice, exercising rights of dissent and

appraisal, exercising or waiving a preemptive right, or giving proxies with respect to that share; or

(5) entering into agreements with respect to that share in accordance with Section 6.251 or 6.252 or with this subchapter. (TREITA 11.20(A).)

Source Law

(A) Unless otherwise provided in this Act, and subject to the provisions of Chapter 8, Business & Commerce Code, a real estate investment trust may regard the person in whose name any shares issued by the real estate investment trust are registered in the share transfer records of the real estate investment trust at any particular time, including shares registered as of a record date fixed under Subsection (C) or (D) of this Section, as the owner of those shares at that time for purposes of:

- (1) voting those shares;
- (2) receiving distributions on or notices in respect of those shares;
- (3) transferring those shares;
- (4) exercising rights of dissent with respect to those shares;
- (5) exercising or waiving any preemptive right with respect to those shares;
- (6) entering into agreements with respect to those shares in accordance with Section 7.40 or 13.20 of this Act; or
- (7) giving proxies with respect to those shares.

Revisor's Note

No substantive change is intended. The revised law adds the words "and appraisal" to the term "dissent" to conform to the language concerning rights of dissent and appraisal found in Subchapter H, Chapter 10, of the code.

Revised Law

Sec. 200.152. NO STATUTORY PREEMPTIVE RIGHT UNLESS SPECIFICALLY PROVIDED BY CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust does not have a preemptive right to acquire securities except to the extent specifically provided by the certificate of formation. (TREITA 3.30(A) (part).)

Source Law

(A) . . .

(5) . . . no shareholder shall have a preemptive right to acquire securities unless specifically provided for in the declaration of trust; and

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.153. CHARACTERIZATION AND TRANSFER OF SHARES AND OTHER SECURITIES. Except as otherwise provided by this code, the shares and other securities of a real estate investment trust are:

- (1) personal property for all purposes; and
- (2) transferable in accordance with Chapter 8, Business & Commerce Code. (TREITA 7.40(A).)

Source Law

(A) Except as otherwise provided in this Act, the shares and other securities of a real estate investment trust are personal property for all purposes and are transferable in accordance with Chapter 8, Business & Commerce Code.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.154. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (a) A restriction on the transfer or registration of transfer of a security may be imposed by:

(1) the real estate investment trust's certificate of formation;

(2) the real estate investment trust's bylaws;

(3) a written agreement among two or more holders of the securities; or

(4) a written agreement among one or more holders of the securities and the real estate investment trust if:

(A) the real estate investment trust files a copy of the agreement at the principal place of business or registered office of the real estate investment trust; and

(B) the copy of the agreement is subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent, attorney, or accountant, as the books and records of the real estate investment trust.

(b) A restriction imposed under Subsection (a) is not valid with respect to a security issued before the restriction has been adopted, unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing the restriction. (TREITA 7.40(B).)

Source Law

(B) A restriction on the transfer or registration of transfer of a security may be imposed by the declaration of trust or bylaws, or by a written agreement among any number of the holders of the securities or a written agreement among any number of the holders and the real estate investment trust, provided the real estate investment trust places on file a counterpart of the agreement at its principal place of business or its registered office. The counterpart of the agreement shall be subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent, attorney, or accountant, as are the books and records of the real estate investment trust. A restriction on the transfer or registration of transfer of a security imposed as described by this Subsection is not valid with respect to any security issued before the adoption of the restriction unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing the restriction.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.155. VALID RESTRICTION ON TRANSFER.
Notwithstanding Sections 200.154 and 200.157, a restriction placed on the transfer or registration of transfer of a security of a real estate investment trust is valid if the restriction reasonably:

(1) obligates the holder of the restricted security to offer a person, including the real estate investment trust or other holders of securities of the real estate investment trust, an opportunity to acquire the restricted security within a reasonable time before the transfer;

(2) obligates the real estate investment trust, to the extent provided by this code, or another person to purchase a

security that is the subject of an agreement relating to the purchase and sale of the restricted security;

(3) requires the real estate investment trust or the holders of a class of the real estate investment trust's securities to consent to a proposed transfer of the restricted security or to approve the proposed transferee of the restricted security for the purpose of preventing a violation of law;

(4) prohibits the transfer of the restricted security to a designated person or group of persons and the designation is not manifestly unreasonable; or

(5) maintains a tax advantage to the real estate investment trust, including maintaining its status as a real estate investment trust under the relevant provisions of the Internal Revenue Code and regulations adopted under the Internal Revenue Code. (TREITA 7.40(E).)

Source Law

(E) In particular and without limiting the general power granted in Subsections (B), (C), and (D) of this Section to impose reasonable restrictions, a restriction on the transfer or registration of transfer of securities of a real estate investment trust is valid if it reasonably:

(1) obligates the holders of the restricted securities to offer to the real estate investment trust or to any other holders of securities of the real estate investment trust or to any other person, or to any combination of those persons, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities;

(2) obligates the real estate investment trust, to the extent permitted by this Act, or any holder of securities of the real estate investment trust or any other person, or any combination of those persons, to purchase the securities that are the subject of an agreement regarding the purchase and sale of the restricted securities;

(3) requires the real estate investment trust or the holders of any class of securities of the real estate investment trust to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted

securities for the purpose of preventing violations of federal or state laws;

(4) prohibits the transfer of the restricted securities to designated persons or classes of persons, and the designation is not manifestly unreasonable; or

(5) maintains any tax advantage to the real estate investment trust, including maintaining its status as a real estate investment trust under the applicable provisions of the Internal Revenue Code of 1986 or the regulations adopted under that law.

Revisor's Note

No substantive change is intended. The term "prior opportunity" has been changed in the revised law to an opportunity "before the transfer" to simplify the language.

Revised Law

Sec. 200.156. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF SHARES OR OTHER SECURITIES. (a) A real estate investment trust that has adopted a bylaw or is a party to an agreement that restricts the transfer of the shares or other securities of the real estate investment trust may file with the county clerk of the county of the principal place of business of the real estate investment trust a copy of the bylaw or agreement and a statement attached to the copy that:

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

(2) states that the attached copy of the bylaw or agreement is a true and correct copy of the bylaw or agreement; and

(3) states that the filing has been authorized by the trust managers or shareholders, as appropriate.

(b) After the statement is filed with the county clerk, the bylaws or agreement restricting the transfer of shares or other securities is a public record, and the fact that the statement has been filed must be stated on a certificate representing the restricted shares or securities if required by Section 3.202.

(c) A real estate investment trust that is a party to an agreement restricting the transfer of the shares or other securities of the real estate investment trust may make the agreement part of the real estate investment trust's certificate of formation without restating the provisions of the agreement in the certificate of formation by complying with this code or amending the certificate of formation. If the agreement alters the original or amended certificate of formation, the altered

provision must be identified by reference or description in the certificate of amendment. If the agreement is an addition to the original or amended certificate of formation, the certificate of amendment must state that fact.

(d) The certificate of amendment must:

(1) include a copy of the agreement restricting the transfer of shares or other securities;

(2) state that the attached copy of the agreement is a true and correct copy of the agreement; and

(3) state that inclusion of the certificate of amendment as part of the certificate of formation has been authorized in the manner required by this code to amend the certificate of formation. (TREITA 7.40(F)(1), (2), (4), (G).)

Source Law

(F)(1) A real estate investment trust that has adopted a bylaw, or that is a party to an agreement restricting the transfer of its shares or other securities, may file the bylaw or agreement as a matter of public record with the county clerk of the county of the principal place of business of the real estate investment trust, as provided in this Subsection.

(2) The real estate investment trust shall file a copy of the bylaw or agreement with the county clerk and a statement attached to the copy setting forth:

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

(b) that the copy of the bylaw or agreement is a true and correct copy of the bylaw or agreement; and

(c) that the filing has been duly authorized by the trust managers or the shareholders, as the case may be.

(4) After the filing of the statement with the county clerk, the bylaw or agreement restricting the transfer of shares or other securities becomes a matter of public record and the fact of the filing of the bylaw or agreement shall be stated on any certificate representing the shares or other securities restricted by the bylaw or agreement if required by Subsection (F) of Section 7.20 of this Act.

(G) By complying with the provisions of

this Act or amending the declaration of trust, a real estate investment trust that is a party to an agreement restricting the transfer of its shares or other securities may make that agreement part of its declaration of trust without restating the provisions of the agreement in the declaration of trust. If the agreement alters any provision of the original or amended declaration of trust, the articles of amendment must identify the altered provision by reference or description. If the agreement is to be an addition to the original or amended declaration of trust, the articles of amendment shall state that fact. A copy of the agreement restricting the transfer of shares or other securities must be attached to the articles of amendment. The articles of amendment shall state that the attached copy of the agreement is a true and correct copy of the agreement and that its inclusion as part of the declaration of trust has been duly authorized in the manner required by this Act to amend the declaration of trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.157. ENFORCEABILITY OF RESTRICTION ON TRANSFER OF CERTAIN SECURITIES. (a) A restriction placed on the transfer or registration of the transfer of a security of a real estate investment trust is specifically enforceable against the holder, or a successor or transferee of the holder, if:

(1) the restriction is reasonable and noted conspicuously on the certificate or other instrument representing the security; or

(2) with respect to an uncertificated security, the restriction is reasonable and a notation of the restriction is contained in the notice sent with respect to the security under Section 3.205.

(b) Unless noted in the manner specified by Subsection (a) with respect to a certificate or other instrument or an uncertificated security, an otherwise enforceable restriction is ineffective against a transferee for value without actual knowledge of the restriction at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value. A restriction is specifically enforceable against a person other than a transferee for value from the time

the person acquires actual knowledge of the restriction's existence. (TREITA 7.40(C), (D).)

Source Law

(C) Any restriction on the transfer or registration of transfer of a security of a real estate investment trust shall be specifically enforceable against the holder of the restricted security or any successor or transferee of the holder if the restriction is:

(1) reasonable and noted conspicuously on the certificate or other instrument representing the security; or

(2) in the case of an uncertificated security, reasonable and notation of the restriction is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the security.

(D) A restriction, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the restriction at the time of the transfer or against any subsequent transferee (whether or not for value), unless the restriction is noted conspicuously on the certificate or other instrument representing the security or, in the case of an uncertificated security, notation of the restriction is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the security. The restriction 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 restriction.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.158. JOINT OWNERSHIP OF SHARES. (a) If shares are registered on the books of a real estate investment trust in the names of two or more persons as joint owners with the right of survivorship and one of the owners dies, the real estate investment trust may record on its books and effect the transfer of the shares to a person, including the surviving joint owner,

and pay any distributions made with respect to the shares, as if the surviving joint owner was the sole owner of the shares. The recording and distribution authorized by this subsection must be made after the death of a joint owner and before the real estate investment trust receives actual written notice that a party other than a surviving joint owner is claiming an interest in the shares or distribution.

(b) The discharge of a real estate investment trust from liability under Section 200.160 and the transfer of full legal and equitable title of the shares does not affect, reduce, or limit any cause of action existing in favor of an owner of an interest in the shares or distribution against the surviving owner. (TREITA 7.40(H) (part).)

Source Law

(H) When shares are registered on the books of a real estate investment trust in the names of two or more persons as joint owners with the right of survivorship, after the death of a joint owner and before the time that the real estate investment trust receives actual written notice that parties other than the surviving joint owner or owners claim an interest in the shares of or any distributions from the real estate investment trust, the real estate investment trust may record on its books and otherwise effect the transfer of those shares to any person, firm, or entity (including that surviving joint owner individually) and may pay any distributions made in respect of those shares, in each case as if the surviving joint owner or owners were the absolute owners of the shares. . . . the discharge of the real estate investment trust from liability and the transfer of full legal and equitable title of the shares does not affect, reduce, or limit any cause of action existing in favor of any owner of an interest in those shares or distributions against the surviving owner or owners.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.159. LIABILITY FOR DESIGNATING OWNER OF SHARES. A real estate investment trust or an officer, trust manager, employee, or agent of the real estate investment trust may not be

held liable for considering a person to be the owner of a share for a purpose described by Section 200.151, regardless of whether the person possesses a certificate for those shares. (TREITA 11.20(B).)

Source Law

(B) Neither the real estate investment trust nor any of the officers, trust managers, employees, or agents of the real estate investment trust are liable for regarding a person described by Subsection (A) of this Section as the owner of those shares at that time for those purposes, regardless of whether that person does not possess a certificate for those shares.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.160. LIABILITY REGARDING JOINT OWNERSHIP OF SHARES. A real estate investment trust that transfers shares or makes a distribution to a surviving joint owner under Section 200.158 before the real estate investment trust has received a written claim for the shares or distribution from another person is discharged from liability for the transfer or payment. (TREITA 7.40(H) (part).)

Source Law

(H) . . . A real estate investment trust permitting such a transfer by and making any distribution to a surviving joint owner or owners before the receipt of written notice from other parties claiming an interest in those shares or distributions is discharged from all liability for the transfer or payment so made provided, however, that

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.161. LIMITATION OF LIABILITY FOR OBLIGATIONS. (a) A holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted is not under an obligation to the real estate investment trust or its obligees with respect to:

(1) the shares, other than the obligation to pay to the real estate investment trust the full amount of

consideration, fixed in compliance with Sections 200.104-200.108, for which the shares were or are to be issued;

(2) any contractual obligation of the real estate investment trust on the basis that the holder, beneficial owner, or subscriber is or was the alter ego of the real estate investment trust or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory; or

(3) any obligation of the real estate investment trust on the basis of the failure of the real estate investment trust to observe any formality, including the failure to:

(A) comply with this code or the declaration of trust or bylaws of the real estate investment trust; or

(B) observe any requirement prescribed by this code or the declaration of trust or bylaws of the real estate investment trust for acts to be taken by the real estate investment trust or its trust managers or shareholders.

(b) Subsection (a)(2) does not prevent or limit the liability of a holder, beneficial owner, or subscriber if the obligee demonstrates that the holder, beneficial owner, or subscriber caused the real estate investment trust to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, beneficial owner, or subscriber. (TREITA 8.10(A).)

Source Law

(A) A holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted is not under an obligation to the real estate investment trust or to its obligees with respect to:

(1) the shares other than the obligation to pay to the real estate investment trust the full amount of the consideration, fixed in compliance with Section 7.30 of this Act, for which the shares were or are to be issued;

(2) any contractual obligation of the real estate investment trust on the basis that the holder, owner, or subscriber is or was the alter ego of the real estate investment trust, or on the basis of actual fraud or constructive fraud, a sham to perpetrate a fraud, or other similar theory, unless the obligee demonstrates that the holder, owner, or subscriber caused the real estate investment trust to be used for the purpose of perpetrating and did perpetrate an

actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, or subscriber; or

(3) any obligation of the real estate investment trust on the basis of the failure of the real estate investment trust to observe any formality, including the failure to:

(a) comply with any requirement of this Act or of the declaration of trust or bylaws of the real estate investment trust; or

(b) observe any requirement prescribed by this Act or by the declaration of trust or bylaws for acts taken by the real estate investment trust, its trust managers, or its shareholders.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.162. PREEMPTION OF LIABILITY. The liability of a holder, beneficial owner, or subscriber of shares of a real estate investment trust for an obligation that is limited by Section 200.161 is exclusive and preempts any other liability imposed for that obligation under common law or otherwise. (TREITA 8.10(B) (part).)

Source Law

(B) The liability of a holder, owner, or subscriber of shares of a real estate investment trust for an obligation that is limited by Subsection (A) of this Section is exclusive and preempts any other liability imposed on a holder, owner, or subscriber of shares of a real estate investment trust for that obligation under common law or otherwise, except that

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.163. EXCEPTIONS TO LIMITATIONS. Section 200.161 or 200.162 does not limit the obligation of a holder, beneficial owner, or subscriber to the obligee of the real estate investment trust if that person:

(1) expressly assumes, guarantees, or agrees to be personally liable to the obligee for the obligation; or

(2) is otherwise liable to the obligee for the obligation under this code or other applicable statute. (TREITA 8.10(B) (part).)

Source Law

(B) . . . this Section does not limit the obligation of a holder, owner, or subscriber to an obligee of the real estate investment trust when:

(1) the holder, owner, or subscriber has expressly assumed, guaranteed, or agreed to be personally liable to the obligee for the obligation; or

(2) the holder, owner, or subscriber is otherwise liable to the obligee for the obligation under this Act or another applicable statute.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.164. PLEDGEES AND TRUST ADMINISTRATORS. (a) A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

(b) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable as a holder of or subscriber to shares of a real estate investment trust.

(c) The estate and funds administered by an executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver are liable for the full amount of the consideration for which the shares were or are to be issued. (TREITA 8.10(D), (E).)

Source Law

(D) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver, shall not be liable personally as a holder of shares of a real estate investment trust, but the estate and funds in his hands shall be liable to pay to the real estate investment trust the full amount of the consideration for which such shares were issued or to be issued.

(E) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Revisor's Note

No substantive change is intended.

[Sections 200.165-200.200 reserved for expansion]

SUBCHAPTER E. DISTRIBUTIONS AND SHARE DIVIDENDS

Revised Law

Sec. 200.201. AUTHORITY FOR DISTRIBUTIONS. The trust managers of a real estate investment trust may authorize a distribution and the real estate investment trust may make a distribution, subject to Section 200.202 and any restriction in the certificate of formation. (TREITA 14.10(A).)

Source Law

(A) The trust managers may authorize and the real estate investment trust may make distributions subject to any restrictions in the declaration of trust and to the limitations set forth in this Section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.202. LIMITATIONS ON DISTRIBUTIONS. (a) A real estate investment trust may not make a distribution:

(1) if the real estate investment trust would be insolvent after the distribution; or

(2) that is more than the surplus of the real estate investment trust.

(b) Notwithstanding Subsection (a)(2), if the net assets of a real estate investment trust are not less than the amount of the proposed distribution, the real estate investment trust may make a distribution involving a purchase or redemption of its own shares if the purchase or redemption is made by the real estate investment trust to:

(1) eliminate fractional shares;

(2) collect or settle indebtedness owed by or to the real estate investment trust;

(3) pay dissenting shareholders entitled to receive payment for their shares under this chapter; or

(4) effect the purchase or redemption of redeemable shares in accordance with this code. (TREITA 14.10(B), (C).)

Source Law

(B) A real estate investment trust may not make a distribution if:

(1) after giving effect to the distribution, the real estate investment trust would be insolvent; or

(2) the distribution exceeds the

surplus of the real estate investment trust.

(C) Notwithstanding the limitation set forth in Subdivision (2) of Subsection (B) of this Section, if the net assets of a real estate investment trust are not less than the amount of the proposed distribution, the real estate investment trust may make a distribution involving a purchase or redemption of any of its own shares if the purchase or redemption is made by the real estate investment trust to:

- (1) eliminate fractional shares;
- (2) collect or compromise indebtedness owed by or to the real estate investment trust;
- (3) pay dissenting shareholders entitled to payment for their shares under this Act; or
- (4) effect the purchase or redemption of redeemable shares in accordance with this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.203. PRIORITY OF DISTRIBUTIONS. A real estate investment trust's indebtedness that arises as a result of the declaration of a distribution and a real estate investment trust's indebtedness issued in a distribution are at parity with the real estate investment trust's indebtedness to its general, unsecured creditors, except to the extent the indebtedness is subordinated, or payment of that indebtedness is secured, by agreement. (TREITA 14.10(D).)

Source Law

(D) A real estate investment trust's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this Section shall be at parity with the real estate investment trust's indebtedness to its general, unsecured creditors, except to the extent the indebtedness is subordinated, or payment of that indebtedness is secured, by agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.204. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM SURPLUS. (a) A real estate investment trust, by resolution of the trust managers of the real estate investment trust, may:

(1) create a reserve out of the surplus of the real estate investment trust; or

(2) designate or allocate in any manner a part or all of the real estate investment trust's surplus for a proper purpose.

(b) A real estate investment trust may increase, decrease, or abolish a reserve, designation, or allocation in the manner provided by Subsection (a). (TREITA 14.60.)

Source Law

14.60. A real estate investment trust, by resolution of its trust managers, may:

(1) create a reserve or reserves out of its surplus or designate or allocate any part or all of its surplus in any manner for any proper purpose or purposes; and

(2) increase, decrease, or abolish the reserve, designation, or allocation in the same manner.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.205. AUTHORITY FOR SHARE DIVIDENDS. The trust managers of a real estate investment trust may authorize a share dividend, and the real estate investment trust may pay a share dividend subject to Section 200.206 and any restriction in the certificate of formation. (TREITA 14.20(A).)

Source Law

(A) The trust managers of a real estate investment trust may authorize and the real estate investment trust may pay share dividends subject to any restrictions in the declaration of trust of the real estate investment trust and to the limitations set forth in this Section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.206. LIMITATIONS ON SHARE DIVIDENDS. (a) A real estate investment trust may not pay a share dividend in authorized but unissued shares of any class if the surplus of the

real estate investment trust is less than the amount required by Section 200.208 to be transferred to stated capital at the time the share dividend is made.

(b) A share dividend in shares of any class may not be made to a holder of shares of any other class unless:

(1) the real estate investment trust's certificate of formation provides for the dividend; or

(2) the share dividend is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the share dividend is to be made. (TREITA 14.20(B), (E).)

Source Law

(B) A real estate investment trust may not pay a share dividend payable in authorized but unissued shares if the surplus of the real estate investment trust is less than the amount required by this Section to be transferred to stated capital at the time that share dividend is paid.

(E) A share dividend payable in shares of any class may not be paid to the holders of shares of any other class unless the declaration of trust so provides or unless the payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.207. VALUE OF SHARES ISSUED AS SHARE DIVIDENDS.

(a) A share dividend payable in authorized but unissued shares with par value shall be issued at the par value of the shares.

(b) A share dividend payable in authorized but unissued shares without par value shall be issued at the value set by the trust managers when the share dividend is authorized. (TREITA 14.20(C) (part), (D) (part).)

Source Law

(C) If a share dividend is payable in authorized but unissued shares having a par value, those shares shall be issued at the par value. . . .

(D) If a share dividend is payable in

authorized but unissued shares without par value, those shares shall be issued at the value fixed by resolution of the trust managers adopted at the time the share dividend is authorized. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.208. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a) When a share dividend payable in authorized but unissued shares with par value is made by a real estate investment trust, an amount of surplus designated by the trust managers that is not less than the aggregate par value of the shares issued as a share dividend shall be transferred to stated capital.

(b) When a share dividend payable in authorized but unissued shares without par value is made by a real estate investment trust, an amount of surplus equal to the aggregate value set by the trust managers with respect to the shares under Section 200.207(b) shall be transferred to stated capital. (TREITA 14.20(C) (part), (D) (part).)

Source Law

(C) If a share dividend is payable in authorized but unissued shares having a par value, At the time that share dividend is paid, an amount of surplus designated by the trust managers, in an amount not less than the aggregate par value of the shares to be issued as a share dividend, shall be transferred to stated capital.

(D) If a share dividend is payable in authorized but unissued shares without par value, At the time the share dividend is paid, an amount of surplus equal to the aggregate value fixed in respect of those shares shall be transferred to stated capital.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED CAPITAL, AND SURPLUS. (a) The determination of whether a real estate investment trust is or would be insolvent and the determination of the value of a real estate investment trust's net assets, stated capital, or surplus and each of the components

of net assets, stated capital, or surplus may be based on:

(1) financial statements of the real estate investment trust that present the financial condition of the real estate investment trust in accordance with generally accepted accounting principles, including financial statements that include subsidiary entities or other entities accounted for on a consolidated basis or on the equity method of accounting;

(2) financial statements prepared using the method of accounting used to file the real estate investment trust's federal income tax return or using any other accounting practices and principles that are reasonable under the circumstances;

(3) financial information, including condensed or summary financial statements, that is prepared on the same basis as financial statements described by Subdivision (1) or (2);

(4) a projection, a forecast, or other forward-looking information relating to the future economic performance, financial condition, or liquidity of the real estate investment trust that is reasonable under the circumstances;

(5) a fair valuation or information from any other method that is reasonable under the circumstances; or

(6) a combination of a statement, a valuation, or information authorized by this section.

(b) Subsection (a) does not apply to the computation of any tax imposed under the laws of this state. (TREITA 14.40.)

Source Law

14.40. (A) Determinations of whether a real estate investment trust is insolvent and determinations of the value of the net assets and of stated capital and surplus of the real estate investment trust, and each of their components, may, but are not required to, be based on:

(1) financial statements of the real estate investment trust that present the financial condition of the real estate investment trust in accordance with generally accepted accounting principles, including financial statements that include subsidiary or other entities accounted for on a consolidated basis or on the equity method of accounting;

(2) financial statements prepared on the basis of accounting used to file the real estate investment trust's federal income tax return or any other accounting practices and principles that are reasonable in the circumstances;

(3) financial information that is prepared on a basis consistent with the financial statements referred to in Subdivisions (1) and (2) of this Subsection, including condensed or summary financial statements;

(4) projection, forecast, or other forward-looking information relating to the future economic performance, financial condition, or liquidity of the real estate investment trust that is reasonable in the circumstances;

(5) a fair valuation or information from any other method that is reasonable in the circumstances; or

(6) any combination of the statements, valuations, or information authorized by this Subsection.

(B) Subsection (A) of this Section and the determinations made in accordance with that Subsection do not apply to the calculation of any tax imposed under the laws of this state.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.210. DATE OF DETERMINATION OF SURPLUS. (a) For purposes of this subchapter, a determination of whether a real estate investment trust is or would be made insolvent by a distribution or share dividend or a determination of the value of a real estate investment trust's surplus shall be made:

(1) on the date the distribution or share dividend is authorized by the trust managers of the real estate investment trust if the distribution or the share dividend is made not later than the 120th day after the date of authorization; or

(2) if the distribution or the share dividend is made more than 120 days after the date of authorization:

(A) on the date designated by the trust managers if the date so designated is not earlier than 120 days before the date the distribution or the share dividend is made; or

(B) on the date the distribution or the share dividend is made if the trust managers do not designate a date as described in Paragraph (A).

(b) For purposes of this section, a distribution that involves:

(1) the incurrence by a real estate investment trust of indebtedness or a deferred payment obligation is considered to

have been made on the date the indebtedness or obligation is incurred; or

(2) a contract by the real estate investment trust to acquire any of its own shares is considered to have been made on the date when the contract is made or takes effect or on the date the shares are acquired, at the option of the real estate investment trust. (TREITA 14.50.)

Source Law

14.50. (A) In the case of a distribution by a real estate investment trust or the payment of a share dividend, the surplus of the real estate investment trust shall be determined and the determination whether the real estate investment trust would be insolvent after giving effect to the distribution shall be made:

(1) if the action is to be taken on or before the 120th day after the date of authorization, on the date that action is authorized by the trust managers; or

(2) if the action is taken after the 120th day after the date of authorization, on the date:

(a) that is within 120 days before the date the action is to be taken and that is designated by the trust managers; or

(b) on the date the action is taken if the trust managers do not make the designation described by Paragraph (a) of this Subdivision.

(B) For the purposes of this Section, a distribution that involves the incurrence by a real estate investment trust of any indebtedness or deferred payment obligation or a distribution that involves a contract by the real estate investment trust to acquire any of its own shares is considered to have been made on the date the indebtedness or obligation is incurred or, in the case of a contract to purchase shares, at the option of the real estate investment trust, either on the date the contract is made or is effective or on the date on which the shares to be acquired are acquired.

Revisor's Note

No substantive change is intended. The

reference to "payment of" a share dividend is not needed because it is redundant with the phrase "share dividend."

Revised Law

Sec. 200.211. SPLIT-UP OR DIVISION OF SHARES. The trust managers of a real estate investment trust may authorize the real estate investment trust to carry out any split-up or division of the issued shares of a class of the real estate investment trust into a larger number of shares within the same class that does not increase the stated capital of the real estate investment trust because the split-up or division of issued shares is not a share dividend or a distribution. (TREITA 14.30.)

Source Law

14.30. A split-up or division of the issued shares of any class of a real estate investment trust into a greater number of shares of the same class without increasing the stated capital of the real estate investment trust does not constitute a share dividend or a distribution and may therefore be approved and authorized by the trust managers and carried out by the real estate investment trust.

Revisor's Note

No substantive change is intended.

[Sections 200.212-200.250 reserved for expansion]

SUBCHAPTER F. SHAREHOLDERS' MEETINGS; VOTING AND QUORUM

Revised Law

Sec. 200.251. ANNUAL MEETING. (a) An annual meeting of the shareholders of a real estate investment trust shall be held at a time that is stated in or set in accordance with the bylaws of the real estate investment trust.

(b) If the annual meeting is not held at the designated time, a shareholder may by certified or registered mail make a written request to an officer or trust manager of the real estate investment trust that the meeting be held within a reasonable time. If the annual meeting is not called before the 61st day after the date the request calling for a meeting is made, any shareholder may bring suit at law or in equity to compel the meeting to be held.

(c) Each shareholder has a justifiable interest sufficient to enable the shareholder to institute and prosecute a legal proceeding described by this section.

(d) The failure to hold an annual meeting at the designated time does not result in the winding up or termination of the real estate investment trust. (TREITA 10.10(B).)

Source Law

(B) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. In the event the trust manager(s) fail to call the annual meeting at the designated time, any shareholder may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directly to any officer or trust manager of the real estate investment trust. If the annual meeting of the shareholders is not called within sixty (60) days following such demand, any shareholder may compel the holding of such annual meeting by legal action directed against said trust manager(s), and all of the extraordinary writs of the common law and of a court of equity shall be available to such shareholder to compel the holding of such annual meeting. Each and every shareholder is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings. Failure to hold the annual meeting at the designated time may not cause the dissolution of the real estate investment trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.252. SPECIAL MEETINGS. A special meeting of the shareholders of a real estate investment trust may be called by:

(1) a trust manager, an officer of the real estate investment trust, or any other person authorized to call special meetings by the certificate of formation or bylaws of the real estate investment trust; or

(2) the holders of at least 10 percent of all of the shares of the real estate investment trust entitled to vote at the proposed special meeting unless a greater or lesser percentage of shares is specified in the certificate of formation, not to exceed 50 percent of the shares entitled to vote. (TREITA 10.10(C).)

Source Law

(C) Special meetings of the shareholders may be called by the trust manager(s), any officer of the real estate investment trust, or such other persons as may be provided in the declaration of trust or the bylaws. Special meetings of the shareholders may also be called by the holders of at least 10 percent of all the shares entitled to vote at the proposed special meeting, unless the declaration of trust provides for a number of shares greater than or less than 10 percent, in which event special meetings of the shareholders may be called by the holders of at least the percentage of shares so specified in the declaration of trust. The declaration of trust may not provide for a number of shares greater than 50 percent.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.253. NOTICE OF MEETING. (a) Written notice of a meeting in accordance with Section 6.051 shall be given to each shareholder entitled to vote at the meeting not later than the 10th day and not earlier than the 60th day before the date of the meeting. Notice shall be given in person or by mail by or at the direction of a trust manager, officer, or other person calling the meeting.

(b) The notice of a special meeting must contain a statement regarding the purpose or purposes of the meeting. (TREITA 11.10(A) (part).)

Source Law

(A) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the trust manager(s) or any officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. . . .

Revisor's Note

No substantive change is intended.
Deleted language defining mailing requirements for notice is covered in Section 6.051(b)(1).

Revised Law

Sec. 200.254. CLOSING OF SHARE TRANSFER RECORDS. Share transfer records that are closed in accordance with Section 6.101 for the purpose of determining which shareholders are entitled to receive notice of a meeting of shareholders shall remain closed for at least 10 days immediately preceding the date of the meeting. (TREITA 11.20(C) (part).)

Source Law

(C) . . . If the share transfer records are closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, the share transfer records shall be closed for at least 10 days immediately before the meeting. . . .

Revisor's Note

No substantive change is intended.
Deleted language regarding closing of the share transfer records and setting a record date is covered in Section 6.101.

Revised Law

Sec. 200.255. RECORD DATE FOR WRITTEN CONSENT TO ACTION. The record date provided in accordance with Section 6.102(a) may not be more than 10 days after the date on which the trust managers adopt the resolution setting the record date. (TREITA 11.20(D) (part).)

Source Law

(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 may not be more than 10 days after the date on which the trust managers adopt the resolution fixing the record date. . . .

Revisor's Note

No substantive change is intended.
Deleted language referring to determining a record date when none has been fixed by the trust managers is covered by Sections 6.102(b) and (c).

Revised Law

Sec. 200.256. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. The record date provided by the trust managers in accordance with Section 6.101 must be at least 10 days before the date on which the particular action requiring the determination of shareholders is to be taken. (TREITA 11.20(C) (part).)

Source Law

(C) . . . 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, in the case of a meeting of shareholders, not less than 10 days, before the date on which the particular action requiring the determination of shareholders is to be taken. . . .

Revisor's Note

No substantive change is intended.
Deleted language regarding closing of the share transfer records and setting a record date is covered in Section 6.101.

Revised Law

Sec. 200.257. QUORUM. (a) Subject to Subsection (b), the holders of the majority of the shares entitled to vote at a meeting of the shareholders of a real estate investment trust that are present or represented by proxy at the meeting are a quorum for the consideration of a matter to be presented at that meeting.

(b) The certificate of formation of a real estate investment trust may provide that a quorum is present only if:

(1) the holders of a specified portion of the shares that is greater than the majority of the shares entitled to vote are represented at the meeting in person or by proxy; or

(2) the holders of a specified portion of the shares that is less than the majority but not less than one-third of the shares entitled to vote are represented at the meeting in person or by proxy.

(c) Unless provided by the certificate of formation or

bylaws of the real estate investment trust, after a quorum is present at a meeting of shareholders, the shareholders may conduct business properly brought before the meeting until the meeting is adjourned. The subsequent withdrawal from the meeting of a shareholder or the refusal of a shareholder present at or represented by proxy at the meeting to vote does not negate the presence of a quorum at the meeting.

(d) Unless provided by the certificate of formation or bylaws, the shareholders of the real estate investment trust at a meeting at which a quorum is not present may adjourn the meeting until the time and to the place as may be determined by a vote of the holders of the majority of the shares who are present or represented by proxy at the meeting. (TREITA 12.10(A), (B).)

Source Law

(A) Unless otherwise provided in the declaration of trust in accordance with this Section, with respect to any meeting of shareholders, a quorum shall be present for any matter to be presented at that meeting if the holders of a majority of the shares entitled to vote at the meeting are represented at the meeting in person or by proxy. The declaration of trust may provide:

(1) that a quorum is present at a meeting of shareholders only if the holders of a specified greater portion of the shares entitled to vote are represented at the meeting in person or by proxy; or

(2) that a quorum is present at a meeting of shareholders if the holders of a specified lesser portion, but not less than one-third, of the shares entitled to vote are represented at the meeting in person or by proxy.

(B) Unless otherwise provided in the declaration of trust or the bylaws, once a quorum is present at a meeting of shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until the meeting is adjourned. The subsequent withdrawal of any shareholder from the meeting or the refusal of any shareholder represented in person or by proxy to vote does not affect the presence of a quorum at the meeting. Unless otherwise provided in the declaration of trust or the

bylaws, the shareholders represented in person or by proxy at a meeting of shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.258. VOTING IN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), trust managers of a real estate investment trust shall be elected by two-thirds of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

(b) The certificate of formation or bylaws of a real estate investment trust may provide that a trust manager of the real estate investment trust shall be elected only if the trust manager receives:

(1) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of trust managers;

(2) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of trust managers and represented in person or by proxy at a meeting of shareholders at which a quorum is present; or

(3) the vote of the holders of a specified portion, but not less than the majority, of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

(c) Subject to Section 200.259, at each election of trust managers of a real estate investment trust, each shareholder entitled to vote at the election is entitled to vote, in person or by proxy, the number of shares owned by the shareholder for as many candidates as there are trust managers to be elected and for whose election the shareholder is entitled to vote. (TREITA 12.10(D), 13.10(E)(1).)

Source Law

[12.10]

(D) Unless otherwise provided in the declaration of trust or the bylaws in accordance with this Section, trust managers shall be elected by two-thirds of the votes

cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present. The declaration of trust or the bylaws may provide:

(1) that a trust manager shall be elected only if the trust manager receives the vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote in the election of trust managers;

(2) that a trust manager shall be elected only if the trust manager receives the vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote in the election of trust managers and represented in person or by proxy at a meeting of shareholders at which a quorum is present; or

(3) that a trust manager shall be elected only if the trust manager receives a specified portion, but not less than a majority, of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

[13.10(E)]

(1) At each election of trust managers, every shareholder entitled to vote at the election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are trust managers to be elected and for whose election the shareholder has a right to vote.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.259. CUMULATIVE VOTING IN ELECTION OF TRUST MANAGERS. (a) Cumulative voting is allowed only if specifically authorized by the certificate of formation of a real estate investment trust.

(b) Cumulative voting occurs when a shareholder:

(1) gives one candidate as many votes as the total of the number of the trust managers to be elected multiplied by the shareholder's shares; or

(2) distributes the votes among one or more candidates using the same principle.

(c) If cumulative voting is specifically authorized by the certificate of formation, a shareholder who intends to cumulate votes must give written notice of that intention to the trust managers on or before the day preceding the date of the election at which the shareholder intends to cumulate votes. (TREITA 13.10(E)(2).)

Source Law

(2) Cumulative voting, whereby a shareholder gives one candidate as many votes as the number of trust managers multiplied by the shareholder's shares equals, or by distributing such votes on the same principle among any number of candidates, may not be permitted unless specifically authorized in the declaration of trust. If cumulative voting is authorized in the declaration of trust, any shareholder who intends to cumulate the shareholder's votes accordingly must give written notice of the shareholder's intention to cumulate the shareholder's votes to the trust managers on or before the day preceding the election at which the shareholder intends to cumulate the shareholder's votes.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.260. VOTING ON MATTERS OTHER THAN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), with respect to a matter other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the affirmative vote of the holders of the majority of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting of a real estate investment trust at which a quorum is present is the act of the shareholders.

(b) With respect to a matter other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation or bylaws of a real estate investment trust may provide that the act of the shareholders of the real estate investment trust is:

(1) the affirmative vote of the holders of a specified

portion, but not less than the majority, of the shares entitled to vote on that matter;

(2) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter and represented in person or by proxy at a shareholders' meeting at which a quorum is present;

(3) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for or against, the matter at a shareholders' meeting at which a quorum is present; or

(4) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting at which a quorum is present. (TREITA 12.10(C).)

Source Law

(C) With respect to any matter, other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this Act, the affirmative vote of the holders of a majority of the shares entitled to vote on, and that voted for or against or expressly abstained with respect to, that matter at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided in the declaration of trust or the bylaws in accordance with this Section. With respect to any matter, other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this Act, the declaration of trust or the bylaws may provide:

(1) that the act of the shareholders shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote on that matter;

(2) that the act of the shareholders shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of

shareholders at which a quorum is present;

(3) that the act of the shareholders shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote on, and voted for or against, that matter at a meeting of shareholders at which a quorum is present; or

(4) that the act of the shareholders shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote on, and that voted for or against or expressly abstained with respect to, that matter at a meeting of shareholders at which a quorum is present.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.261. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.

(a) In this section, a "fundamental action" means:

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

(b) Except as otherwise provided by this code or the certificate of formation or bylaws of a real estate investment trust in accordance with Section 200.260, the vote required for approval of a fundamental action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on the fundamental action.

(c) If a class or series of shares is entitled to vote as a class or series on a fundamental action, the vote required for approval of the action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the action as a class and at least two-thirds of the outstanding shares otherwise entitled to vote on the action. Shares entitled to vote as a class or series shall be entitled to vote only as a class or series unless otherwise entitled to vote on each matter generally or otherwise provided by the certificate of formation.

(d) Unless an amendment to the certificate of formation is undertaken by the trust managers under Section 200.103, separate voting by a class or series of shares of a real estate investment

trust is required for approval of an amendment to the certificate of formation that would result in:

- (1) the increase or decrease of the aggregate number of authorized shares of the class or series;
- (2) the increase or decrease of the par value of the shares of the class, including changing shares with par value into shares without par value or changing shares without par value into shares with par value;
- (3) effecting an exchange, reclassification, or cancellation of all or part of the shares of the class or series;
- (4) effecting an exchange or creating a right of exchange of all or part of the shares of another class or series into the shares of the class or series;
- (5) the change of the designations, preferences, limitations, or relative rights of the shares of the class or series;
- (6) the change of the shares of the class or series, with or without par value, into the same or a different number of shares, with or without par value, of the same class or series or another class or series;
- (7) the creation of a new class or series of shares with rights and preferences equal, prior, or superior to the shares of the class or series;
- (8) increasing the rights and preferences of a class or series with rights and preferences equal, prior, or superior to the shares of the class or series;
- (9) increasing the rights and preferences of a class or series with rights or preferences later or inferior to the shares of the class or series in such a manner that the rights or preferences will be equal, prior, or superior to the shares of the class or series;
- (10) dividing the shares of the class into series and setting and determining the designation of the series and the variations in the relative rights and preferences between the shares of the series;
- (11) the limitation or denial of existing preemptive rights or cumulative voting rights of the shares of the class or series; or
- (12) canceling or otherwise affecting the dividends on the shares of the class or series that have accrued but have not been declared.

(e) Unless otherwise provided by the certificate of formation, if the holders of the outstanding shares of a class that is divided into series are entitled to vote as a class on a proposed amendment that would affect equally all series of the class, other than a series in which no shares are outstanding or a series that is not affected by the amendment, the holders of the separate series are not entitled to separate class votes.

(f) Unless otherwise provided by the certificate of formation, a proposed amendment to the certificate of formation that would solely effect changes in the designations, preferences, limitations, or relative rights, including voting rights, of one or more series of shares of the real estate investment trust that have been established under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103 does not require the approval of the holders of the outstanding shares of a class or series other than the affected series if, after giving effect to the amendment:

(1) the preferences, limitations, or relative rights of the affected series may be set and determined by the trust managers with respect to the establishment of a new series of shares under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103; or

(2) any new series established as a result of a reclassification of the affected series are within the preferences, limitations, and relative rights that are described by Subdivision (1). (TREITA 19.10 (part), 22.20(A) (part), 22.30.)

Source Law

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 any class or series of shares is entitled to vote as a class on the dissolution, in which case the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares within each class or series of shares entitled to vote as a class on the dissolution and at least two-thirds of the outstanding shares otherwise entitled to vote on the dissolution. Shares entitled to vote as a class shall be entitled to vote only as a class unless otherwise entitled to vote on each matter generally or provided in the declaration of trust. . . .

22.20. (A) . . .

(3) At the meeting, a vote of the shareholders entitled to vote on the proposed amendment shall be taken on the proposed amendment. The proposed amendment is adopted

on receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on the proposed amendment unless any class or series of shares is entitled to vote on the proposed amendment as a class, in which case the proposed amendment shall be adopted on receiving the affirmative vote of the holders of at least two-thirds of the shares within each class or series of outstanding shares entitled to vote on the proposed amendment as a class and of at least two-thirds of the total outstanding shares entitled to vote on the proposed amendment.

22.30. (A) The holders of the outstanding shares of a class shall be entitled to vote as a class on a proposed amendment, and the holders of the outstanding shares of a series shall be entitled to vote as a class on a proposed amendment, whether or not entitled to vote on the proposed amendment by the provisions of the declaration of trust, if the amendment would accomplish any of the following, unless the amendment is undertaken pursuant to authority granted to the trust managers in the declaration of trust in accordance with Section 3.30 of this Act:

(1) increase or decrease the aggregate number of authorized shares of such class or series;

(2) increase or decrease the par value of the shares of such class, including changing shares having a par value into shares without par value, or shares without par value into shares with par value;

(3) effect an exchange, reclassification, or cancellation of all or part of the shares of such class or series;

(4) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class or series;

(5) change the designations, preferences, limitations, or relative rights of the shares of such class or series;

(6) change the shares of such

class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or series or another class or series;

(7) create a new class or series of shares having rights and preferences equal, prior, or superior to the shares of the class or series, or increase the rights and preferences of any class or series having rights and preferences equal, prior, or superior to the shares of the class or series, or increase the rights and preferences of any class or series having rights or preferences later or inferior to the shares of the class or series in such a manner as to become equal, prior, or superior to the shares of the class or series;

(8) divide the shares of the class into series and fix and determine the designation of the series and the variations in the relative rights and preferences between the shares of the series;

(9) limit or deny the existing preemptive rights of the shares of the class or series, if the rights have previously been granted pursuant to this Act; or

(10) cancel or otherwise affect dividends on the shares of the class or series that had accrued but had not been declared.

(B) Unless otherwise provided in a real estate investment trust's declaration of trust, if the holders of the outstanding shares of a class that is divided into series are entitled to vote as a class on a proposed amendment and the amendment would affect all series of the class equally, other than any series of which no shares are outstanding or any series that is not affected by the amendment, the holders of the separate series are not entitled to separate class votes.

(C) Unless otherwise provided in a real estate investment trust's declaration of trust, a proposed amendment to the real estate investment trust's declaration of trust that would solely effect changes in the designations, preferences, limitations, or

relative rights, including voting rights, of one or more series of shares of the real estate investment trust that have been established pursuant to the authority granted the trust managers in the declaration of trust in accordance with this Act does not require the approval of the holders of the outstanding shares of any class or series other than that series if the preferences, limitations, and relative rights of that series after giving effect to the amendment and of any series that may be established as a result of a reclassification of that series are, in each case, within those permitted to be fixed and determined by the trust managers with respect to the establishment of any new series of shares pursuant to the authority granted to the trust managers in the declaration of trust in accordance with this Act.

Revisor's Note

This section has been revised to mirror the language in Section 21.364. The term "fundamental action" is new. The Texas Real Estate Investment Trust Act provisions regarding dissolution of a real estate investment trust are minimal. To a great extent, the Texas Real Estate Investment Trust Act depends on the incorporation of the more detailed dissolution provisions governing for-profit corporations from the Texas Business Corporation Act. The more detailed provisions of Chapter 11 of the revised law, which are largely based on the Texas Business Corporation Act, provide guidance to practitioners, real estate investment trusts, and courts with respect to the process of winding up and termination of real estate investment trusts.

Section 200.261 is not new with respect to an amendment of a certificate of formation, a voluntary winding up under Chapter 11, and a revocation of a voluntary decision to wind up under Section 11.151. These concepts are contained in the Texas Business Corporation Act, although the revised law uses different terminology (e.g.,

"winding up" instead of "dissolution"). The concept of a cancellation of some of the events requiring winding up under Section 11.152 may be considered new for corporations and real estate investment trusts. The revised law also uses the term "reinstatement" to refer to what the Texas Business Corporation Act calls a revocation of a voluntary dissolution after filing the articles of dissolution. Section 11.202 of the revised law extends this reinstatement right from 120 days to three years after the filing of the certificate of termination, but limits the right so that certain conditions must be satisfied. However, the reinstatement rights provided in Section 11.202 parallel the survival provisions for corporations found in the Texas Business Corporation Act and contained in the revised law in Sections 11.356 and 11.357 and have several similar provisions 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. These revised provisions regarding winding up and termination of the domestic real estate investment trust provide symmetry and consistency with other types of entities.

While the concept of cancellation of certain events requiring winding up under Section 11.152 is new for corporations and real estate investment trusts, one of the events requiring winding up referred to in that section, namely the expiration of the duration of the corporation, is not new and can be found in Texas Business Corporation Act Article 7.12.E, which is incorporated by reference into the Texas Real Estate Investment Trust Act. The other events requiring winding up specified in Section 11.152 rarely occur for real estate investment trusts because they arise from events specified in the governing documents of the domestic entity that require the winding up or events specified in the Code requiring the winding up of the domestic entity. See Revisor's Notes to Sections

11.201, 11.152, 21.364, and 200.451.

Revised Law

Sec. 200.262. CHANGES IN VOTE REQUIRED FOR CERTAIN MATTERS.

(a) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation of a real estate investment trust may provide that the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter is required for shareholder action on that matter.

(b) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares of a class or series is required by this code, the certificate of formation may provide that the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares of that class or series is required for action of the holders of shares of that class or series on that matter.

(c) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares entitled to vote on a matter is required for shareholder action on that matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation.

(d) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares of a class or series is required for shareholder action on a matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation. (TREITA 12.10(E).)

Source Law

(E) With respect to any matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this Act, the declaration of trust may provide that the act of the shareholders on that matter shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares entitled to vote on that matter, rather than the affirmative vote otherwise required by this Act. With respect to any matter for which the affirmative vote of the holders of a specified portion of the shares of any class or series is required by this Act, the declaration of trust also may

provide that the act of the holders of shares of that class or series on that matter shall be the affirmative vote of the holders of a specified portion, but not less than a majority, of the shares of that class or series, rather than the affirmative vote of the holders of shares of that class or series otherwise required by this Act. If any provision of the declaration of trust provides that the act of the shareholders on any matter shall be the affirmative vote of the holders of a specified portion of the shares entitled to vote on that matter that is greater than a majority of the shares so entitled to vote, that provision of the declaration of trust may not be amended or modified, directly or indirectly, without the affirmative vote of the holders of that greater portion of the shares entitled to vote on that matter, unless otherwise provided in the declaration of trust. If any provision of the declaration of trust provides that the act of the holders of shares of any class or series on any matter shall be the affirmative vote of the holders of a specified portion of the shares of that class or series that is greater than a majority of the shares of that class or series, that provision of the declaration of trust may not be amended or modified, directly or indirectly, without the affirmative vote of the holders of that greater portion of the shares of that class or series, unless otherwise provided in the declaration of trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.263. NUMBER OF VOTES PER SHARE. (a) Except as provided by the certificate of formation of a real estate investment trust or this title or Title 1, each outstanding share, regardless of class, is entitled to one vote on each matter submitted to a vote at a shareholders' meeting.

(b) If the certificate of formation provides for more or less than one vote per share on a matter for all of the outstanding shares or for the shares of a class or series, each reference in this code or in the certificate of formation or

bylaws, unless expressly stated otherwise, to a specified portion of the shares with respect to that matter refers to the portion of the votes entitled to be cast with respect to those shares under the certificate of formation. (TREITA 13.10(A).)

Source Law

(A)(1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except:

(a) to the extent that the declaration of trust provides for more or less than one vote per share or (if and to the extent permitted by this Act) limits or denies voting rights to the holders of the shares of any class or series; or

(b) as otherwise provided by this Act.

(2) If the declaration of trust provides for more or less than one vote per share for all the outstanding shares or for the shares of any class or any series on any matter, every reference in this Act or in the declaration of trust or bylaws, unless expressly stated otherwise in the declaration of trust or bylaws, in connection with such matter to a specified portion of those shares shall mean the portion of the votes entitled to be cast in respect of the shares by virtue of the provisions of the declaration of trust.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.264. VOTING IN PERSON OR BY PROXY. (a) A shareholder may vote in person or by proxy executed in writing by the shareholder.

(b) A telegram, telex, cablegram, or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, is considered an execution in writing for purposes of this section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. (TREITA 13.10(C) (part).)

Source Law

(C) Any shareholder may vote either in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram, or similar transmission by the shareholder or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder shall be treated as an execution in writing for purposes of this Section. . . .

Revisor's Note

The term "electronic transmission" has been added to the revised law as an acceptable method by which a shareholder may vote by proxy. This change conforms with modern practice whereby proxy votes are now accepted by telephone and Internet communications and parallels the provisions for for-profit corporations in Section 21.367. See the Revisor's Note to Section 21.367.

Revised Law

Sec. 200.265. TERM OF PROXY. A proxy is not valid after 11 months after the date the proxy is executed unless otherwise provided by the proxy. (TREITA 13.10(C) (part).)

Source Law

(C) . . . No proxy shall be valid after 11 months from the date of its execution unless provided otherwise in the proxy. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.266. REVOCABILITY OF PROXY. (a) In this section, a "proxy coupled with an interest" includes the appointment as proxy of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares subject to the proxy;
- (3) a person who owns or holds an option to purchase the shares subject to the proxy;
- (4) a creditor of the real estate investment trust who extended the real estate investment trust credit under terms requiring the appointment;

(5) an employee of the real estate investment trust whose employment contract requires the appointment; or

(6) a party to a voting agreement created under Section 6.252.

(b) A proxy is revocable unless:

(1) the proxy form conspicuously states that the proxy is irrevocable; and

(2) the proxy is coupled with an interest. (TREITA 13.10(C) (part).)

Source Law

(C) . . . A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Proxies coupled with an interest include the appointment as proxy of:

(1) a pledgee;

(2) a person who purchased or agreed to purchase or who owns or holds an option to purchase the shares;

(3) a creditor of the real estate investment trust who extended to the real estate investment trust credit under terms requiring the appointment;

(4) an employee of the real estate investment trust whose employment contract requires the appointment; or

(5) a party to a voting agreement created under Subsection (B) of Section 13.20 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.267. ENFORCEABILITY OF PROXY. (a) An irrevocable proxy is specifically enforceable against the holder of shares or any successor or transferee of the holder if:

(1) the proxy is noted conspicuously on the certificate representing the shares subject to the proxy; or

(2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.

(b) An irrevocable proxy that is otherwise enforceable is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against a subsequent transferee, regardless of

whether the transfer is for value, unless:

- (1) the proxy is noted conspicuously on the certificate representing the shares subject to the proxy; or
 - (2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.
- (c) An irrevocable proxy shall be specifically enforceable against a person who is not a transferee for value from the time the person acquires actual knowledge of the existence of the irrevocable proxy. (TREITA 13.10(D).)

Source Law

(D) An irrevocable proxy, if noted conspicuously on the certificate representing the shares that are subject to the irrevocable proxy or, in the case of uncertificated shares, if notation of the irrevocable proxy 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 irrevocable proxy, 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 irrevocable proxy or, in the case of uncertificated shares, unless notation of the irrevocable proxy 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 irrevocable proxy, an irrevocable proxy, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against any subsequent transferee, whether or not for value. The irrevocable proxy 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 irrevocable proxy.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.268. PROCEDURES IN BYLAWS RELATING TO PROXIES. A real estate investment trust may establish in the bylaws of the real estate investment trust procedures consistent with this code for determining the validity of proxies and determining whether shares held of record by a bank, broker, or other nominee are represented at a meeting of shareholders. The procedures may incorporate rules of and determinations made by a self-regulatory organization regulating that bank, broker, or other nominee. (TREITA 12.10(F).)

Source Law

(F) A real estate investment trust may establish procedures in its bylaws, consistent with this Act, for determining the validity of proxies and whether shares that are held of record by a bank, broker, or other nominee are represented at a meeting of shareholders with respect to any matter. Those procedures may incorporate or look to rules and determinations of self regulatory organizations regulating that bank, broker, or other nominee.

Revisor's Note

No substantive change is intended.

[Sections 200.269-200.300 reserved for expansion]

SUBCHAPTER G. TRUST MANAGERS

Revised Law

Sec. 200.301. MANAGEMENT BY TRUST MANAGERS. The control, operation, disposition, investment, and management of the trust estate and the powers necessary or appropriate to effect any purpose for which a real estate investment trust is organized are vested in one or more trust managers. (TREITA 4.10(A) (part).)

Source Law

(A) The control, operation, disposition, investment, reinvestment and management of the trust estate and, whether included in the foregoing or not, all powers necessary or appropriate to effect any or all of the purposes for which the real estate investment trust is organized shall be vested in one or more trust manager(s)

Revisor's Note

No substantive change is intended. The term "reinvestment" is omitted from the

revised law as redundant with "investment."

Revised Law

Sec. 200.302. DESIGNATION OF TRUST MANAGERS. (a) The certificate of formation of a real estate investment trust must contain the name of each trust manager.

(b) A successor trust manager must be selected in accordance with the certificate of formation. The selection of a successor trust manager is considered an amendment to the certificate of formation of a real estate investment trust. (TREITA 4.10(A) (part).)

Source Law

(A) The control, operation, disposition, investment, reinvestment and management of the trust estate and, whether included in the foregoing or not, all powers necessary or appropriate to effect any or all of the purposes for which the real estate investment trust is organized shall be vested in one or more trust manager(s) named in the declaration of trust or successor(s) selected in accordance therewith; provided that naming successor trust manager(s) shall be considered an amendment to the declaration of trust. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.303. TRUST MANAGER ELIGIBILITY REQUIREMENTS. A trust manager of a real estate investment trust must be an individual. Unless the certificate of formation or bylaws of a real estate investment trust provide otherwise, a person is not required to be a resident of this state or a shareholder of the real estate investment trust to serve as a trust manager. The certificate of formation or bylaws may prescribe other qualifications for trust managers. (TREITA 4.10(A) (part).)

Source Law

(A) . . . Trust managers must be natural persons but do not need to be residents of this state or shareholders of the real estate investment trust unless the declaration of trust or bylaws so require. The declaration of trust or bylaws may prescribe other qualifications for the trust manager(s).

Revisor's Note

No substantive change is intended. The revised law is made consistent with other provisions of the code by changing the term "natural person" to "individual."

Revised Law

Sec. 200.304. NUMBER OF TRUST MANAGERS. (a) The certificate of formation or bylaws of the real estate investment trust shall set the number of trust managers or provide for the manner of determining the number of trust managers, except that the certificate of formation shall set the number constituting the initial trust managers.

(b) The number of trust managers may be increased or decreased by amendment to, or as provided by, the certificate of formation or bylaws. A decrease in the number of trust managers may not shorten the term of an incumbent trust manager. (TREITA 4.10(B) (part).)

Source Law

(B) The number of trust managers shall be fixed by, or in the manner provided in, the declaration of trust or the bylaws, except for the number of initial trust managers, which shall be fixed by the declaration of trust. The number of trust managers may be increased or decreased from time to time by amendment to, or in the manner provided in, the declaration of trust or the bylaws. A decrease in the number of trust managers does not shorten the term of any incumbent trust manager. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.305. COMPENSATION. A trust manager or officer of a real estate investment trust is entitled to receive compensation set by or in the manner provided by the certificate of formation or bylaws of the real estate investment trust. If the certificate of formation or bylaws do not provide for compensation to trust managers and officers, the trust managers of the real estate investment trust must determine the compensation by vote at a meeting or by written consent. (TREITA 4.10(H).)

Source Law

(H) The trust manager(s) and the officers of the real estate investment trust

shall receive such compensation as may be fixed by, or in the manner provided in, the declaration of trust or the bylaws. If the declaration of trust or bylaws does not contain a provision for compensation to the trust managers and officers of the real estate investment trust, the compensation for the trust managers and officers shall be determined by vote of the trust managers.

Revisor's Note

No substantive change is intended. In the last sentence, the revised law clarifies that the trust managers can act at a meeting or by written consent. This result was implicit in the source law.

Revised Law

Sec. 200.306. TERM OF TRUST MANAGER. (a) Except as provided by the certificate of formation or bylaws of a real estate investment trust, a trust manager of the real estate investment trust serves until the trust manager's successor is elected.

(b) A trust manager may succeed himself or herself in office.

(c) If a successor trust manager is not elected, the trust manager in office continues to serve as trust manager until the trust manager's successor is elected. (TREITA 4.10(B) (part).)

Source Law

(B) . . . Unless otherwise provided in the declaration of trust or the bylaws, a trust manager shall serve until the manager's successor has been elected by the requisite vote. A trust manager may succeed himself or herself in office. If no successor trust manager is elected, the existing trust manager shall remain in office until the manager's successor is elected.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.307. STAGGERED TERMS OF TRUST MANAGERS. (a) A governing document of a real estate investment trust may provide that all or some of the board of trust managers may be divided into two or three classes. Each class must include the same or a similar number of trust managers as each other class.

(b) The terms of office of trust managers constituting the

first class expire on the election of successors at the first annual meeting of shareholders after the election of those trust managers. The terms of office of trust managers constituting the second class expire on the election of successors at the second annual meeting of shareholders after election of those trust managers. The terms of office of trust managers constituting the third class, if any, expire on the election of successors at the third annual meeting of shareholders after election of those trust managers.

(c) If a governing document of the real estate investment trust provides for the classification of trust managers, an annual election for trust managers as a whole is not necessary. At each annual meeting held after the classification of trust managers, an election shall be held to elect the number of trust managers equal to the number of trust managers in the class the term of which expires on the date of the meeting, and those trust managers serve until:

(1) the second succeeding annual meeting if there are two classes; or

(2) the third succeeding annual meeting if there are three classes.

(d) Unless provided by the certificate of formation or a bylaw adopted by shareholders, staggered terms for trust managers do not take effect until the next annual meeting of shareholders at which trust managers are elected. Staggered terms for trust managers may not be effected if any shareholder has the right to cumulate votes for the election of trust managers and the number of trust managers is fewer than nine trust managers. (TREITA 4.10(C).)

Source Law

(C) The bylaws of a real estate investment trust may provide that the trust managers be divided into two or three classes, each class to be as nearly equal in number as possible. The bylaws may provide that the terms of office of trust managers of the first class expire on the election of a successor at the first annual meeting of shareholders after their election, that the terms of office of trust managers of the second class expire on the election of a successor at the second annual meeting after their election, and that the terms of office of trust managers of the third class, if any, expire on the election of a successor at the third annual meeting after their election. If the bylaws provide for the classification of

trust managers, (1) an annual election for the whole number of trust managers is not necessary, and (2) at each annual meeting after the classification, the number of trust managers equal to the number of the class whose terms expire at the time of the meeting shall stand for election to office until the second succeeding annual meeting if there are two classes or until the third succeeding annual meeting if there are three classes. A classification of trust managers does not take effect before the next annual meeting of shareholders at which trust managers are elected unless the classification is effected by a bylaw adopted by the shareholders. A classification of trust managers is not effective for any real estate investment trust if any shareholder has the right to cumulate his votes for the election of trust managers of the real estate investment trust unless there are nine or more trust managers.

Revisor's Note

The revised law clarifies that staggered terms for trust managers can be effected by the bylaws or the certificate of formation. The Texas Real Estate Investment Trust Act mentioned only bylaws, but implicit in other provisions was the authority of the declaration of trust to include any provision that could have been placed in the bylaws.

Revised Law

Sec. 200.308. VACANCY. (a) Except as provided by Subsection (b), a vacancy occurring in the office of a trust manager of a real estate investment trust may be filled by the affirmative vote of the majority of the remaining trust managers, even if the majority of trust managers constitutes less than a quorum of the trust managers.

(b) The certificate of formation or bylaws of the real estate investment trust may provide an alternative procedure for filling a vacancy occurring in the office of a trust manager, including filling vacancies by simple majority or super majority votes of the shareholders.

(c) The term of a trust manager elected to fill a vacancy occurring in the office of a trust manager is the unexpired term of the trust manager's predecessor in office and until the trust manager's successor is elected and has qualified. (TREITA 4.10(D).)

Source Law

(D) Any vacancy occurring in the trust managers may be filled by the vote of a majority of the remaining trust managers, though less than a quorum; provided, however, that the declaration of trust or bylaws may provide an alternative procedure for filling vacancies, including simple majority or super-majority votes of the shareholders. A trust manager elected to fill a vacancy shall be elected for the unexpired term of the trust manager's predecessor in office and until the trust manager's successor is elected and qualified.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.309. NOTICE OF MEETING. (a) Regular meetings of the trust managers of a real estate investment trust may be held with or without notice as prescribed by the real estate investment trust's bylaws.

(b) Special meetings of the trust managers shall be held with notice as prescribed by the bylaws.

(c) A notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting, unless required by the bylaws. (TREITA 10.20(B) (part).)

Source Law

(B) Regular meetings of the trust manager(s) may be held with or without notice as prescribed in the bylaws. Special meetings of the trust manager(s) shall be held upon such notice as is prescribed in the bylaws. . . . Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the trust manager(s) need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.310. QUORUM. A quorum of the board of trust managers of a real estate investment trust is the majority of the

number of trust managers unless the certificate of formation or bylaws require a greater number. (TREITA 4.10(E).)

Source Law

(E) A majority of the number of trust managers shall constitute a quorum for the transaction of business unless a greater number is required by the declaration of trust or the bylaws.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.311. COMMITTEES OF TRUST MANAGERS. (a) If authorized by the certificate of formation or bylaws, the trust managers of a real estate investment trust, by resolution adopted by a majority of the trust managers, may designate:

(1) committees composed of one or more trust managers;
or

(2) trust managers as alternate committee members to replace absent or disqualified committee members at a committee meeting, subject to any limitations imposed by the trust managers.

(b) To the extent provided by the resolution designating a committee or the certificate of formation or bylaws and subject to Subsection (c), the committee has the authority of the trust managers.

(c) A committee of the trust managers may not:

(1) amend the certificate of formation, except to classify or reclassify shares in accordance with Section 200.103 if authorized by the resolution designating the committee, certificate of formation, or bylaws;

(2) propose a reduction of stated capital of the real estate investment trust;

(3) approve a plan of merger or share exchange of the real estate investment trust;

(4) recommend to shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the real estate investment trust not made in the usual and regular course of its business;

(5) recommend to the shareholders a voluntary winding up and termination or a revocation of the real estate investment trust;

(6) amend, alter, or repeal the bylaws or adopt new bylaws;

(7) fill vacancies in the offices of the trust managers;

(8) fill vacancies in or designate alternate members

of a committee of the trust managers;

(9) fill a vacancy to be filled because of an increase in the number of trust managers;

(10) elect or remove officers of the real estate investment trust or members or alternate members of a committee of the trust managers;

(11) set the compensation of the members or alternate members of a committee of the trust managers; or

(12) alter or repeal a resolution of the trust managers that states that it may not be amended or repealed.

(d) A committee of the trust managers may authorize a distribution or the issuance of shares if authorized by the resolution designating the committee or by the certificate of formation or bylaws.

(e) The designation of and delegation of authority to a committee of the trust managers does not relieve a trust manager of responsibility imposed by law. (TREITA 4.30.)

Source Law

4.30. (A) If the declaration of trust or the bylaws provide for the designation of committees of trust managers, the trust managers, by resolution adopted by a majority of the trust managers, may designate from among the members of the trust managers one or more committees. The committees must be composed of one or more of the members of the trust managers. The trust managers may designate one or more of their members as alternate members of any committee who, subject to any limitations imposed by the trust managers, may replace absent or disqualified members at any meeting of that committee. To the extent provided in the resolution or in the declaration of trust or the bylaws, a committee has and may exercise all of the authority of the trust managers subject to the limitations set forth in Subsections (B) and (C) of this Section.

(B) A committee of trust managers does not have the authority of the trust managers with regard to:

(1) amending the declaration of trust, except that a committee, to the extent provided in the resolution designating that committee or in the declaration of trust or the bylaws, may exercise the authority of the trust managers to classify or reclassify

shares in accordance with Section 3.30 of this Act;

(2) proposing a reduction of the stated capital of the real estate investment trust;

(3) approving a plan of merger or share exchange of the real estate investment trust;

(4) recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the real estate investment trust other than in the usual and regular course of its business;

(5) recommending to the shareholders a voluntary dissolution of the real estate investment trust or a revocation of the trust;

(6) amending, altering, or repealing the bylaws or adopting new bylaws of the real estate investment trust;

(7) filling vacancies in the trust managers;

(8) filling vacancies in or designating alternate members of the committee;

(9) filling any trust manager vacancy occurring because of an increase in the number of trust managers;

(10) electing or removing officers of the real estate investment trust or members or alternate members of the committee;

(11) fixing the compensation of any member or alternate member of the committee; or

(12) altering or repealing any resolution of the trust managers that by its terms provides that it may not be altered in that manner or repealed.

(C) A committee of the trust managers may not authorize a distribution or the issuance of shares of the real estate investment trust, unless the distribution or issuance is authorized by the resolution designating that committee or the declaration of trust or the bylaws.

(D) The designation of a committee of

trust managers and the delegation to the committee of the trust managers' authority does not relieve any trust manager of any responsibility imposed by law.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.312. LIABILITY OF TRUST MANAGERS. (a) A trust manager of a real estate investment trust who votes for or assents to a distribution of assets made by the real estate investment trust to its shareholders during the liquidation of the real estate investment trust without the payment and discharge of or the making of adequate provision for the payment of all of the known debts, liabilities, and other obligations of the real estate investment trust is jointly and severally liable to the real estate investment trust for the value of the distributed assets to the extent the debts, liabilities, and other obligations are not paid and discharged.

(b) A trust manager of a real estate investment trust who votes for or assents to the making of a loan to another trust manager or officer of the real estate investment trust or to the making of a loan secured by shares of the real estate investment trust is jointly and severally liable to the real estate investment trust for the loan amount until the loan is repaid.

(c) A trust manager is not jointly and severally liable under Subsection (a) if, in determining the amount available for the distribution, the trust manager, acting in good faith and with ordinary care:

(1) relied on information, opinions, reports, or statements in accordance with Section 3.102; or

(2) considered the assets of the real estate investment trust to be valued at least at book value. (TREITA 15.10(A) (part), (B).)

Source Law

(A) In addition to any other liabilities imposed by law upon trust manager(s) of a real estate investment trust:

(1) The trust manager(s) of a real estate investment trust who vote for or assent to any distribution of assets of a real estate investment trust to its shareholders during the liquidation of the real estate investment trust without the payment and discharge of, or making adequate provisions for, all known debts, obligations and liabilities of the real estate investment

trust shall be jointly and severally liable to the real estate investment trust for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the real estate investment trust are not thereafter paid and discharged.

(2) The trust manager(s) of a real estate investment trust who vote for or assent to the making of a loan to an officer or trust manager(s) of the real estate investment trust or the making of any loans secured by the shares of the real estate investment trust, shall be jointly and severally liable to the real estate investment trust for the amount of such loan until the repayment thereof.

. . .

(B) The trust manager(s) shall not be liable under Subsection (A)(1) of this Section if, in the exercise of ordinary care, in good faith, in determining the amount available for any such dividend or distribution, he (i) considered the assets to be of their book value or (ii) relied on information, opinions, reports, or statements, including financial statements and other financial data, concerning the real estate investment trust or another person, that were prepared or presented by:

(a) one or more officers or employees of the real estate investment trust, other than the trust manager;

(b) legal counsel, public accountants, investment bankers, or other persons as to matters the trust manager reasonably believes are within the person's professional or expert competence; or

(c) a committee of the trust managers of which the trust manager is not a member.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.313. STATUTE OF LIMITATIONS ON CERTAIN ACTION AGAINST TRUST MANAGERS. An action may not be brought against a trust manager of a real estate investment trust under Section 200.312 after the second anniversary of the date the alleged act

giving rise to the liability occurred. (TREITA 15.10(G).)

Source Law

(G) An action may not be brought against a trust manager for liability imposed by this Section after two years after the date on which the act alleged to give rise to the liability occurred.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.314. IMMUNITY FROM LIABILITY FOR PERFORMANCE OF DUTY. A trust manager of a real estate investment trust may not be held liable to the real estate investment trust for an act, omission, loss, damage, or expense arising from the performance of the trust manager's duties under the trust, except for liability arising from the wilful misfeasance, wilful malfeasance, or gross negligence of the trust manager. (TREITA 15.10(E).)

Source Law

(E) No trust manager shall be liable to the real estate investment trust for any act, omission, loss, damage, or expense arising from the performance of his duty under a real estate investment trust, save only for his own wilful misfeasance, wilful malfeasance, or gross negligence.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.315. RIGHT OF CONTRIBUTION. A trust manager who is liable for a claim asserted under Section 200.312 is entitled to receive contribution from each of the other trust managers who are liable with respect to that claim in an amount appropriate to achieve equity. (TREITA 15.10(F).)

Source Law

(F) A trust manager found liable with respect to a claim is entitled to receive contribution, as appropriate to achieve equity, from each of the other trust managers who are liable with respect to that claim.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.316. OFFICERS. (a) An officer of a real estate investment trust designated by the trust managers under Section 3.103 may exercise all of the powers of a trust manager relating to the business and affairs of the real estate investment trust, unless action by the trust managers is specified by this code or another applicable law.

(b) A designation of or delegation of authority to an officer of a real estate investment trust described by this section does not relieve a trust manager of responsibility imposed by law. (TREITA 4.10(F) (part).)

Source Law

(F) The trust manager(s) may designate one or more persons, regardless of whether the persons are trust managers, to constitute officers of the real estate investment trust to the extent provided in the declaration of trust or in the bylaws of the real estate investment trust, who shall have and may exercise all of the authorities of the trust manager(s) in the business and affairs of the real estate investment trust except where action of the trust manager(s) is specified by this Act or other applicable laws, but the designation of such officers and the delegation thereto of authority shall not operate to relieve the trust manager(s), or any member thereof, of any responsibility imposed upon them or him by law. . . .

Revisor's Note

No substantive change is intended. The revised law omits the language in the source law providing the authority to designate officers because it is contained in Section 3.103 of the code.

Revised Law

Sec. 200.317. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED TRUST MANAGERS AND OFFICERS. (a) This section applies only to a contract or transaction between a real estate investment trust and:

(1) one or more of the trust's trust managers or officers; or

(2) an entity or other organization in which one or more of the trust's trust managers or officers:

(A) is a managerial official; or

(B) has a financial interest.

(b) An otherwise valid contract or transaction is valid notwithstanding that a trust manager or officer of the trust is present at or participates in the meeting of the trust managers or of a committee of the trust managers that authorizes the contract or transaction, or votes to authorize the contract or transaction, if:

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

(A) the trust managers or a committee of the trust managers, and the trust managers or committee of the trust managers in good faith authorize the contract or transaction by the affirmative vote of the majority of disinterested trust managers or committee members, regardless of whether the disinterested trust managers or committee members constitute a quorum; or

(B) the shareholders entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith by a vote of the shareholders; or

(2) the contract or transaction is fair to the real estate investment trust when the contract or transaction is authorized, approved, or ratified by the trust managers, a committee of the trust managers, or the shareholders.

(c) Common or interested trust managers may be included in determining the presence of a quorum at a meeting of the trust managers, or a committee of the trust managers, that authorizes the contract or transaction. (TREITA 4.20.)

Source Law

4.20. (A) A contract or transaction between a real estate investment trust and one or more of the trust managers or officers of the real estate investment trust, or between a real estate investment trust and any other real estate investment trust, corporation, partnership, association, or other organization, is not void or voidable solely because one or more of the trust managers or officers of the real estate investment trust are trust managers, directors, or officers or have a financial interest in the other real estate investment trust, corporation, partnership, association, or other organization; solely because the trust manager or officer is present at or participates in the meeting of the trust managers or committee of trust managers that

authorizes the contract or transaction; or solely because the trust manager's or officer's votes are counted for the authorization if:

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

(2) the material facts as to the trust manager's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

(3) the contract or transaction is fair as to the real estate investment trust as of the time the contract or transaction is authorized, approved, or ratified by the trust managers, a committee of trust managers, or the shareholders.

(B) Common or interested trust managers may be counted in determining the presence of a quorum at a meeting of the trust managers or of a committee of trust managers that authorizes the contract or transaction.

Revisor's Note

The revised law has been revised to parallel the counterpart language in the for-profit corporation provisions of Title 2. The language also parallels revisions to Article 2.35-1, Texas Business Corporation Act, effected by the 1997 Texas Legislature to clarify certain ambiguities that had arisen out of Delaware case law. These ambiguities are similarly resolved in the revised language of Section 200.317 by providing that contracts or transactions between a real estate investment trust and an

interested manager or officer are valid notwithstanding the trust manager's vote or participation in the meeting at which the contract is authorized if one of several approvals is obtained. The term

"disinterested" is defined in Section 1.003.

[Sections 200.318-200.350 reserved for expansion]

SUBCHAPTER H. INVESTMENTS

Revised Law

Sec. 200.351. INVESTMENTS. A trust manager or officer of a real estate investment trust has complete discretion with respect to the investment of the trust estate unless the investment is contrary to or inconsistent with:

- (1) this chapter;
- (2) a provision of the Internal Revenue Code relating to or governing real estate investment trusts; or
- (3) regulations adopted under a provision of the Internal Revenue Code relating to or governing real estate investment trusts. (TREITA 4.10(G).)

Source Law

(G) The trust manager(s) or officers shall have the power to exercise complete discretion with respect to the investment of the trust estate so long as the investment is not contrary to or inconsistent with this Section or with the sections of the Internal Revenue Code of 1986 (or any successor statute) which relate to or govern real estate investment trusts or the regulations adopted under such sections.

Revisor's Note

No substantive change is intended.

[Sections 200.352-200.400 reserved for expansion]

SUBCHAPTER I. FUNDAMENTAL BUSINESS TRANSACTIONS

Revised Law

Sec. 200.401. DEFINITIONS. In this subchapter:

(1) "Participating shares" means shares that entitle the holders of the shares to participate without limitation in distributions.

(2) "Sale of all or substantially all of the assets" means the sale, lease, exchange, or other disposition, other than a pledge, mortgage, deed of trust, or trust indenture unless otherwise provided by the certificate of formation, of all or substantially all of the property and assets of a domestic real estate investment trust that is not made in the usual and regular course of the trust's business without regard to whether the

disposition is made with the goodwill of the business. The term does not include a transaction that results in the real estate investment trust directly or indirectly:

(A) continuing to engage in one or more businesses; or

(B) applying a portion of the consideration received in connection with the transaction to the conduct of a business that the real estate investment trust engages in after the transaction.

(3) "Shares" includes a receipt or other instrument issued by a depository representing an interest in one or more shares or fractions of shares of a domestic or foreign real estate investment trust that are deposited with the depository.

(4) "Voting shares" means shares that entitle the holders of the shares to vote unconditionally in elections of trust managers. (TREITA 23.30(H), 24.10(A) (part), (B), 24.20(A) (part).)

Source Law

[23.30]

(H) In this Section:

(1) "Participating shares" means shares that entitle the holders of the shares to participate in distributions without limitation.

(2) "Voting shares" means shares that entitle the holders of the shares to vote unconditionally in elections of trust managers.

[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. . . .

(B) A transaction referred to in this Section of this Act is in the usual and regular course of business if the real estate investment trust, directly or indirectly, continues to engage in one or more businesses or applies a portion of the consideration received in connection with the transaction to the conduct of a business in which it engages following the transaction.

[24.20]

(A) A 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, the property and assets, with or without the good will, of a real estate investment trust, if not made in the usual and regular course of its business, may be made on the terms and conditions and for the consideration that 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 may be authorized in the following manner: . . .

Revisor's Note

Sections 200.401-200.405 have been reordered and revised to parallel the counterpart language in the corporation provisions of Title 2, which incorporate changes to the Texas Business Corporation Act made by the 1997 Texas Legislature that govern the procedures for mergers, share exchanges, and conversions for corporations. The definition of "sale of all or substantially all of the assets" in Section 200.401 has been introduced and parallels the same definition for for-profit corporations reflected in Section 21.451. The defined term "shares" was not found in the Texas Real Estate Investment Trust Act but is derived from the more modern provisions of Texas Business Corporation Act Article 5.03.I, which is also reflected in Section 21.541. Thus, Sections 200.401-200.405 have been updated to conform with the updated

corporation provisions of the Texas Business Corporation Act, from which the Texas Real Estate Investment Trust Act provisions were originally derived and which are incorporated into the Texas Real Estate Investment Trust Act by reference.

Revised Law

Sec. 200.402. APPROVAL OF MERGER. (a) A real estate investment trust that is a party to the merger under Chapter 10 must approve the merger by complying with this section.

(b) The trust managers of the real estate investment trust shall adopt a resolution that:

(1) approves the plan of merger; and

(2) if shareholder approval of the merger is required by this subchapter:

(A) recommends that the plan of merger be approved by the shareholders of the real estate investment trust; or

(B) directs that the plan of merger be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of merger.

(c) Except as provided by this subchapter or Chapter 10, the plan of merger shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of merger to the shareholders.

(d) If the trust managers approve a plan of merger required to be approved by the shareholders of the real estate investment trust but do not adopt a resolution recommending that the plan of merger be approved by the shareholders, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of merger without a recommendation.

(e) Except as provided by Chapter 10 or Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of merger as provided by this subchapter. (TREITA 23.30(A), (B), (C).)

Source Law

(A) Except as provided by Subsection (G) of this Section, after acting on a plan of merger or exchange in the manner prescribed by Subdivision (1) of Subsection (B) of this Section, the trust managers of each domestic real estate investment trust that is a party to the merger and the trust managers of each domestic real estate

investment trust whose shares are to be acquired in the share exchange shall submit the plan of merger or exchange for approval by its shareholders.

(B) Except as provided by Subsection (G) of this Section, for a plan of merger or exchange to be approved:

(1) the trust managers of the real estate investment trust may adopt a resolution recommending that the plan of merger or exchange be approved by the shareholders of the real estate investment trust, unless the trust managers determine that for any reason the trust managers should not make that recommendation, in which case the trust managers may adopt a resolution directing that the plan of merger or exchange be submitted to shareholders for approval without recommendation and, in connection with the submission, communicate the basis for the trust managers' determination that the plan be submitted to shareholders without any recommendation; and

(2) the shareholders entitled to vote on the plan of merger or exchange must approve the plan.

(C) The trust managers may condition the trust managers' submission to shareholders of a plan of merger or exchange on any basis.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.403. APPROVAL OF CONVERSION. (a) A real estate investment trust must approve a conversion under Chapter 10 by complying with this section.

(b) The trust managers of the real estate investment trust shall adopt a resolution that approves the plan of conversion and:

(1) recommends that the plan of conversion be approved by the shareholders of the real estate investment trust; or

(2) directs that the plan of conversion be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of conversion.

(c) The plan of conversion shall be submitted to the shareholders of the real estate investment trust for approval as

provided by this subchapter. The trust managers may place conditions on the submission of the plan of conversion to the shareholders.

(d) If the trust managers approve a plan of conversion but do not adopt a resolution recommending that the plan of conversion be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of conversion without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust must approve the plan of conversion as provided by this subchapter. (New.)

Revisor's Note

See the revisor's note to Section 200.401. The conversion language has been added to the revised law as a result of updating to conform with the counterpart corporation provisions.

Revised Law

Sec. 200.404. APPROVAL OF EXCHANGE. (a) A real estate investment trust the shares of which are to be acquired in an exchange under Chapter 10 must approve the exchange by complying with this section.

(b) The trust managers shall adopt a resolution that approves the plan of exchange and:

(1) recommends that the plan of exchange be approved by the shareholders of the real estate investment trust; or

(2) directs that the plan of exchange be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of exchange.

(c) The plan of exchange shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of exchange to the shareholders.

(d) If the trust managers approve a plan of exchange but do not adopt a resolution recommending that the plan of exchange be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of exchange to shareholders without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of exchange as provided by this subchapter. (TREITA 23.30(A), (B), (C).)

Source Law

(A) Except as provided by Subsection (G) of this Section, after acting on a plan of merger or exchange in the manner prescribed by Subdivision (1) of Subsection (B) of this Section, the trust managers of each domestic real estate investment trust that is a party to the merger and the trust managers of each domestic real estate investment trust whose shares are to be acquired in the share exchange shall submit the plan of merger or exchange for approval by its shareholders.

(B) Except as provided by Subsection (G) of this Section, for a plan of merger or exchange to be approved:

(1) the trust managers of the real estate investment trust may adopt a resolution recommending that the plan of merger or exchange be approved by the shareholders of the real estate investment trust, unless the trust managers determine that for any reason the trust managers should not make that recommendation, in which case the trust managers may adopt a resolution directing that the plan of merger or exchange be submitted to shareholders for approval without recommendation and, in connection with the submission, communicate the basis for the trust managers' determination that the plan be submitted to shareholders without any recommendation; and

(2) the shareholders entitled to vote on the plan of merger or exchange must approve the plan.

(C) The trust managers may condition the trust managers' submission to shareholders of a plan of merger or exchange on any basis.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.405. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS. (a) Except as provided by the certificate of formation of a domestic real estate investment trust, a sale, lease, pledge, mortgage, assignment, transfer, or other

conveyance of an interest in real property or other assets of the real estate investment trust does not require the approval or consent of the shareholders of the real estate investment trust unless the transaction constitutes a sale of all or substantially all of the assets of the real estate investment trust.

(b) A real estate investment trust must approve the sale of all or substantially all of its assets by complying with this section.

(c) The trust managers of the real estate investment trust shall adopt a resolution that approves the sale of all or substantially all of the assets of the real estate investment trust and:

(1) recommends that the sale of all or substantially all of the assets of the real estate investment trust be approved by the shareholders of the real estate investment trust; or

(2) directs that the sale of all or substantially all of the assets of the real estate investment trust be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the sale.

(d) The sale of all or substantially all of the assets of the real estate investment trust shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the proposed sale to the shareholders.

(e) If the trust managers approve the sale of all or substantially all of the assets of the real estate investment trust but do not adopt a resolution recommending that the proposed sale be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the proposed sale to shareholders without a recommendation.

(f) The shareholders of the real estate investment trust shall approve the sale of all or substantially all of the assets of the real estate investment trust as provided by this subchapter.

(g) After the approval of the sale by the shareholders, the trust managers may abandon the sale of all or substantially all of the assets of the real estate investment trust, subject to the rights of a third party under a contract relating to the assets, without further action or approval by the shareholders. (TREITA 24.10, 24.20(A) (part).)

Source Law

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.

(B) A transaction referred to in this Section of this Act is in the usual and regular course of business if the real estate investment trust, directly or indirectly, continues to engage in one or more businesses or applies a portion of the consideration received in connection with the transaction to the conduct of a business in which it engages following the transaction.

(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.

24.20. (A) A 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, the property and assets, with or without the good will, of a real estate investment trust, if not made in the usual and regular course of its business, may be made on the terms and conditions and for the consideration that 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 may be authorized in the following manner:

(1) The trust managers may adopt a resolution recommending that the sale, lease, exchange, or other disposition of the property and assets of a real estate investment trust be approved by shareholders of the real estate investment trust, unless the trust managers determine that for any reason they should not make the recommendation, in which case the trust managers may adopt a resolution directing that the sale, lease, exchange, or other disposition be submitted to shareholders without approval and, in connection with the submission, communicate the basis for its determination that the sale, lease, exchange, or other disposition be submitted without shareholder approval.

(2) The trust managers may submit the proposed sale, lease, exchange, or other disposition for authorization by the real estate investment trust's shareholders at an annual or special meeting of shareholders.

. . .

(5) After the authorization for the disposition of the assets and property by vote of shareholders, the trust managers, nevertheless, in their discretion may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating to the assets, without further action or approval by shareholders.

Revisor's Note

See the revisor's note to Section
200.401.

Revised Law

Sec. 200.406. GENERAL PROCEDURE FOR SUBMISSION TO SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a fundamental business transaction involving a real estate investment trust is required to be submitted to the shareholders of the real estate investment trust under this subchapter, the real estate investment trust shall notify each shareholder of the real estate investment trust that the fundamental business transaction is being submitted to the shareholders for approval at a meeting of shareholders as required by this subchapter, regardless of whether the shareholder is entitled to vote on the matter.

(b) If the fundamental business transaction is a merger, conversion, or interest exchange, the notice required by Subsection (a) shall contain or be accompanied by a copy or summary of the plan of merger, conversion, or interest exchange, as appropriate, and the notice required by Section 10.355.

(c) The notice of the meeting must:

(1) be given not later than the 21st day before the date of the meeting; and

(2) state that the purpose, or one of the purposes, of the meeting is to consider the fundamental business transaction. (TREITA 23.30(D), 24.20(A) (part).)

Source Law

[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.

[24.20]

(A) . . .

(3) Written or printed notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided for in this

Act for giving notice of meetings to shareholders. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of the assets or property of the real estate investment trust.

. . .

Revisor's Note

No substantive change is intended. A "fundamental business transaction" is defined in Chapter 1 to be a merger, interest exchange, conversion, or sale of all or substantially all of the assets of the entity.

Revised Law

Sec. 200.407. GENERAL VOTE REQUIREMENT FOR APPROVAL OF FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this code or the certificate of formation or bylaws of a real estate investment trust in accordance with Section 200.261, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the real estate investment trust entitled to vote on a fundamental business transaction is required to approve the transaction.

(b) Unless provided by the certificate of formation or Section 200.408, shares of a class or series that are not otherwise entitled to vote on matters submitted to shareholders generally will not be entitled to vote for the approval of a fundamental business transaction.

(c) Except as provided by this code, if a class or series of shares of a real estate investment trust is entitled to vote on a fundamental business transaction as a class or series, in addition to the vote required under Subsection (a), the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the fundamental business transaction as a class or series is required to approve the transaction.

(d) Unless required by the certificate of formation, approval of a merger by shareholders is not required under this code for a real estate investment trust that is a party to the plan of merger unless that real estate investment trust is also a party to the merger. (TREITA 23.30(E), 24.20(A) (part).)

Source Law

[23.30]

(E) Unless the trust managers (acting pursuant to Subsection (C) of this Section)

require a greater vote or a vote by class or series, the vote of shareholders required for approval of a plan of merger or exchange shall be the affirmative vote of the holders of at least two-thirds of the outstanding shares of each real estate investment trust entitled to vote on the plan of merger or exchange, unless any class or series of shares of any such real estate investment trust is entitled to vote as a class on the plan of merger or exchange, in which event the vote required for approval by the shareholders of the real estate investment trust shall be the affirmative vote of the holders of at least two-thirds of the outstanding shares otherwise entitled to vote on the plan of merger or exchange as a class and at least two-thirds of the outstanding shares otherwise entitled to vote on the plan of merger or exchange. Shares entitled to vote as a class shall be entitled to vote only as a class unless otherwise entitled to vote on each matter submitted to the shareholders generally or as provided in the declaration of trust.

[24.20]

(A) . . .

(4) At the meeting, the shareholders may authorize the sale, lease, exchange, or other disposition of the assets and property and may fix, or may authorize the trust managers to fix, any or all of the terms and conditions of the disposition and the consideration to be received by the real estate investment trust for the disposition. The authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the real estate investment trust entitled to vote on the authorization, unless any class or series of shares of the real estate investment trust is entitled to vote as a class on the authorization, in which case the vote required for authorization by the shareholders shall be the affirmative vote of the holders of at least two-thirds of the outstanding shares within each such class or

series entitled to vote on the authorization as a class and at least two-thirds of the outstanding shares otherwise entitled to vote on the authorization. Shares entitled to vote as a class shall be entitled to vote only as a class unless otherwise entitled to vote on each matter submitted to the shareholders generally or provided in the declaration of trust.

. . .

Revisor's Note

The revised law combines two separate provisions covering voting requirements for mergers on the one hand and voting requirements for the sale, lease, exchange, or other disposition of the assets on the other hand into one provision relating to "fundamental business transactions," which covers all of these. The requirement under Section 200.407(d) that approval by shareholders is not necessary where the real estate investment trust is not "a party to the merger" (as defined in Chapter 1) is new and is made to conform to the modernized law for for-profit corporations.

Revised Law

Sec. 200.408. CLASS VOTING REQUIREMENTS FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a plan of merger or conversion if:

(1) the plan of merger or conversion contains a provision that would require approval by that class or series of shares under Section 200.262 if the provision was contained in a proposed amendment to the real estate investment trust's certificate of formation; or

(2) that class or series of shares is entitled under the certificate of formation to vote as a class or series on the plan of merger or conversion.

(b) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a plan of exchange if:

(1) shares of that class or series are to be exchanged under the terms of the plan of exchange; or

(2) that class or series is entitled under the certificate of formation to vote as a class or series on the plan of exchange.

(c) Separate voting by a class or series of shares of a

real estate investment trust is required for approval of a sale of all or substantially all of the assets of the real estate investment trust if that class or series of shares is entitled under the certificate of formation to vote as a class or series on the sale of the real estate investment trust's assets.

(TREITA 23.30(F), 24.20(A) (part).)

Source Law

[23.30]

(F) Separate voting by a class or series of shares of a declaration of trust shall be required:

(1) for approval of a plan of merger if:

(a) the plan contains a provision that if contained in a proposed amendment to the declaration of trust would require approval by that class or series of shares under Section 22.30 of this Act; or

(b) that class or series of shares is entitled under the declaration of trust to vote as a class on the plan of merger or exchange; and

(2) on a plan of exchange if:

(a) shares of that class or series are to be exchanged pursuant to the terms of the plan; or

(b) that class or series is entitled under the declaration of trust to vote as a class on the plan of merger or exchange.

[24.20]

(A) . . .

(4) At the meeting, the shareholders may authorize the sale, lease, exchange, or other disposition of the assets and property and may fix, or may authorize the trust managers to fix, any or all of the terms and conditions of the disposition and the consideration to be received by the real estate investment trust for the disposition. The authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the real estate investment trust entitled to vote on the authorization, unless any class or series of shares of the real estate

investment trust is entitled to vote as a class on the authorization, in which case the vote required for authorization by the shareholders shall be the affirmative vote of the holders of at least two-thirds of the outstanding shares within each such class or series entitled to vote on the authorization as a class and at least two-thirds of the outstanding shares otherwise entitled to vote on the authorization. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.409. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the real estate investment trust's certificate of formation, a plan of merger is not required to be approved by the shareholders of a real estate investment trust if:

(1) the real estate investment trust is the sole surviving real estate investment trust in the merger;

(2) the certificate of formation of the real estate investment trust following the merger will not differ from the real estate investment trust's certificate of formation before the merger;

(3) immediately after the effective date of the merger, each shareholder of the real estate investment trust whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights;

(4) the sum of the voting power of the number of voting shares outstanding immediately after the merger and the voting power of securities that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the voting power of the total number of voting shares of the real estate investment trust that are outstanding immediately before the merger; and

(5) the sum of the number of participating shares that are outstanding immediately after the merger and the number of participating shares that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the total number of participating shares of the real estate investment trust that are outstanding immediately before the merger.

(b) Unless required by the certificate of formation, a plan of merger effected under Section 10.005 or 10.006 does not require the approval of the shareholders of the real estate

investment trust. (TREITA 23.30(G) (part).)

Source Law

(G) Unless the declaration of trust otherwise requires, approval by the shareholders of a real estate investment trust on a plan of merger is not required and Subsections (A) through (F) of this Section do not apply if:

(1) the real estate investment trust is the sole surviving real estate investment trust in the merger;

(2) the declaration of trust of the real estate investment trust will not differ from its declaration of trust before the merger;

(3) each shareholder of the real estate investment trust whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the effective date of the merger;

(4) the voting power of the number of voting shares outstanding immediately after the merger, plus the voting power of the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights to purchase securities issued pursuant to the merger, will not exceed by more than 20 percent the voting power of the total number of voting shares of the real estate investment trust outstanding immediately before the merger;

(5) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights to purchase securities issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares of the real estate investment trust outstanding immediately before the merger;

and

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.410. RIGHTS OF DISSENT AND APPRAISAL. A shareholder of a domestic real estate investment trust has the rights of dissent and appraisal under Subchapter H, Chapter 10, with respect to a fundamental business transaction. (TREITA 25.10, 25.20, 25.30.)

Source Law

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.

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. 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. 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) 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. 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.

(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.

(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. 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. 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.

(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.

(F) This Section does not apply to a merger if, on the date of the filing of the articles of merger, the surviving entity is the owner of all the outstanding shares of the other entities, domestic or foreign, that are parties to the merger.

(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. 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.

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.

(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. 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. 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 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.

(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. 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

The laws governing the rights of dissent and appraisal of a shareholder of a domestic real estate investment trust have been updated and standardized in accordance with the rights of owners of all domestic entities who are entitled to dissent and appraisal. These provisions are found in Subchapter H of Chapter 10 of the code.

[Sections 200.411-200.450 reserved for expansion]

SUBCHAPTER J. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Revised Law

Sec. 200.451. APPROVAL OF VOLUNTARY WINDING UP. A real estate investment trust must approve a voluntary winding up under Chapter 11 by the affirmative vote of the shareholders in accordance with Section 200.261. (TREITA 19.10 (part).)

Source Law

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 any class or series

of shares is entitled to vote as a class on the dissolution, in which case the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares within each class or series of shares entitled to vote as a class on the dissolution and at least two-thirds of the outstanding shares otherwise entitled to vote on the dissolution. Shares entitled to vote as a class shall be entitled to vote only as a class unless otherwise entitled to vote on each matter generally or provided in the declaration of trust. . . .

Revisor's Note

Section 19.10, Texas Real Estate Investment Trust Act, addresses the process of dissolution of a real estate investment trust in a cursory manner and provides little guidance to trust managers, legal counsel, and courts. To a great extent, the Texas Real Estate Investment Trust Act depends on the more detailed dissolution provisions of the Texas Business Corporation Act, which are incorporated by reference. The more detailed provisions of Chapter 11 of the revised law, which are largely based on the Texas Business Corporation Act, provide significant guidance to practitioners, real estate investment trusts, and courts with respect to the process of winding up and termination of real estate investment trusts.

The requirement of filing a withdrawal of an assumed name certificate in the last sentence of Section 19.10, Texas Real Estate Investment Trust Act, is deleted as unnecessary. Any requirement for filing and withdrawal of an assumed name certificate should be left to the assumed name law of this state.

Revised Law

Sec. 200.452. APPROVAL OF REINSTATEMENT, CANCELLATION, OR REVOCATION OF VOLUNTARY WINDING UP. A real estate investment trust may reinstate its existence under Section 11.202, revoke a voluntary decision to wind up under Section 11.151, or cancel an event requiring winding up under Section 11.152 by the affirmative vote of the shareholders in accordance with Section

200.261. (New.)

Revisor's Note

See the revisor's note to Section
200.451.

Revised Law

Sec. 200.453. RESPONSIBILITY FOR WINDING UP. If a real estate investment trust determines or is required to wind up, the trust managers shall manage the winding up of the business or affairs of the real estate investment trust. (TREITA 19.10 (part).)

Source Law

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

Revisor's Note

See the revisor's note to Section
200.451.

[Sections 200.454-200.500 reserved for expansion]

SUBCHAPTER K. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 200.501. EXAMINATION OF RECORDS. (a) On written demand stating a proper purpose, a shareholder of record of a real estate investment trust for at least six months immediately preceding the shareholder's demand, or a holder of record of at least five percent of all of the outstanding shares of a real estate investment trust, is entitled to examine and copy, at a reasonable time, the real estate investment trust's relevant books and records of account, minutes, and share transfer records. The examination may be conducted in person or through an agent or attorney.

(b) This section does not impair the power of a court, on the presentation of proof of proper purpose by a shareholder, to compel the production for examination by the shareholder of the books and records of account, minutes, and share transfer records of a real estate investment trust, regardless of the period during which the shareholder was a record holder and regardless of the number of shares held by the person. (TREITA 18.10(B), (C).)

Source Law

(B) Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least five per cent (5%) of all the outstanding shares of a real estate investment trust, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders, and shall be entitled to make extracts therefrom.

(C) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel production, for examination by such shareholder, of the books and records of account, minutes, and record of shareholders of a real estate investment trust.

Revisor's Note

No substantive change is intended. The source law's reference to "make extracts" has been modernized to read "copy."

Revised Law

Sec. 200.502. JOINDER OF SHAREHOLDERS NOT REQUIRED. The joinder of shareholders of a real estate investment trust is not required for any sale, lease, mortgage, or other disposition of all or part of the assets of the real estate investment trust.
(TREITA 17.10.)

Source Law

17.10. The joinder of shareholders in any sale, mortgage, lease, or other disposition of all or any part of assets of a real estate investment trust shall not be required.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 200.503. TAX LAW REQUIREMENTS. In connection with a real estate investment trust qualifying or attempting to qualify as a real estate investment trust under the Internal Revenue Code and the regulations adopted under the Internal Revenue Code, a provision of this chapter is subject to the provisions of the Internal Revenue Code or the regulations relating to or governing real estate investment trusts adopted under those provisions if:

(1) the provision of this chapter is contrary to or inconsistent with the federal provisions or regulations;

(2) the federal provisions or regulations require a real estate investment trust to take any action required to secure or maintain its status as a real estate investment trust under the federal provisions or regulations; or

(3) the federal provisions or regulations prohibit the real estate investment trust from taking any action required to secure or maintain its status as a real estate investment trust under the federal provision or regulation. (TREITA 4.10(I).)

Source Law

(I) To the extent any provision of this Act is contrary to or inconsistent with the sections of the Internal Revenue Code of 1986 (or any successor statute) which relate to or govern real estate investment trusts or the regulations adopted under those sections, or requires any trust formed hereunder to take (or prohibits any trust formed hereunder from taking) any action required to secure or maintain its status as a real estate investment trust under such sections or regulations, the sections and regulations of the Internal Revenue Code of 1986 (or any successor statute) shall prevail over the provisions of this Act as to any real estate investment trust qualifying or attempting to qualify under such sections and regulations.

Revisor's Note

No substantive change is intended.

TITLE 6. ASSOCIATIONS

CHAPTER 251. COOPERATIVE ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Cooperative basis" means that net savings, after payment of any investment dividends or after provision for separate funds has been made as required or authorized by law,

the certificate of formation, or bylaws, are:

(A) allocated or distributed to a member patron or to each patron in proportion to patronage; or

(B) retained by the entity for:

(i) actual or potential expansion of the entity's services;

(ii) the reduction of charges to patrons; or

(iii) any other purpose consistent with the entity's nonprofit character.

(2) "Invested capital" means funds invested in a cooperative association by an investor with the expectation of receiving an investment dividend.

(3) "Investment dividend" means the return on invested capital or on membership capital derived from the net savings of the cooperative association.

(4) "Membership capital" means the funds of a cooperative association derived from members of the cooperative association generally as a requirement of membership or in lieu of patronage dividends. The term does not include deposits or loans from members.

(5) "Net savings" means the total income of a cooperative association less the costs of operation.

(6) "Patronage dividend" means a share of the net savings distributed among members of the cooperative association on the basis of patronage, as provided by the certificate of formation.

(7) "Savings returns" means the amount returned by a cooperative association to patrons of a cooperative association in proportion to patronage or otherwise. (CAA 2(3), (4), (5), (6), (7), (8), (9).)

Source Law

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of

its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Revisor's Note

No substantive change is intended. Section 251.001 sets forth definitions applicable to Title 6 but does not include definitions for "association" and "member," which are defined in Title 1. The other definitions contained in this section have not been materially changed.

Revised Law

Sec. 251.002. APPLICABILITY OF NONPROFIT CORPORATION PROVISIONS. (a) A provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations applies to a cooperative association.

(b) Notwithstanding Subsection (a), this chapter controls over any conflicting provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations. (CAA 3.)

Source Law

3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit

Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as non-profit corporations except to the extent that these are limited or enlarged by this Act.

Revisor's Note

No substantive change is intended. The former limitation on powers is now included in Subchapter A of Chapter 2.

Revised Law

Sec. 251.003. EXEMPTION. This chapter does not apply to a corporation or association organized on a cooperative basis under a statute of this state other than this chapter unless that other statute specifically states that this chapter does apply. (CAA 45; TNPCA 10.04.A (part), C; TMCLA 1.03.)

Source Law

[CAA 45]

45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737-5764, Revised Civil Statutes Texas, 1925) [repealed; now see Texas Agriculture Code Sec. 52.001 et seq.].

[TNPCA 10.04]

A. . . . 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.

. . .

C. This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act; provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

[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.

Revisor's Note

No substantive change is intended. This

section clarifies that the applicability of this chapter is limited to the cooperatives created under this chapter and does not extend to corporations or associations created under other law. Consistent with existing provisions in the Texas Non-Profit Corporation Act and the Texas Miscellaneous Corporation Laws Act, the general law that may be applicable to other cooperatives is usually the Texas Non-Profit Corporation Act, although for some of such cooperatives the Texas Business Corporation Act may be applicable. Examples of cooperative corporations or associations that may be formed under other Texas statutes are:

(1) Texas Agriculture Code Section 52.001 et seq. (Cooperative Marketing Association);

(2) Texas Agriculture Code Section 51.001 et seq. (Farmers Cooperative Society);

(3) Texas Agriculture Code Section 55.001 et seq. (Cooperative Credit Association);

(4) Texas Health and Safety Code Section 301.002 (Hospital Laundry Cooperative Association);

(5) Texas Health and Safety Code Section 301.032 (Health Related Institutions Cooperative Association);

(6) Texas Insurance Code, Article 26.13 (Texas Health Benefits Purchasing Cooperative);

(7) Texas Insurance Code, Article 26.14 (Private Purchasing Cooperative);

(8) Texas Utilities Code, Chapter 161 (Electric Cooperative Corporation Act); and

(9) Texas Utilities Code, Chapter 162 (Telephone Cooperative Act).

[Sections 251.004-251.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Revised Law

Sec. 251.051. ORGANIZATION MEETING. After a cooperative association's certificate of formation is filed, the cooperative association shall hold an organization meeting in accordance with Section 22.104. (CAA 9(c).)

Source Law

(c) After the issuance of the

certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.052. AMENDMENT OF CERTIFICATE OF FORMATION. (a) The board of directors of a cooperative association may propose an amendment to the cooperative association's certificate of formation by a two-thirds vote of the board members. The members of a cooperative association may petition to amend the certificate of formation as provided by the bylaws.

(b) Not later than the 31st day before the date of the meeting, the secretary shall:

(1) send notice of a meeting to consider a proposed amendment to each member of the cooperative association at the member's last known address; or

(2) post notice of a meeting to consider a proposed amendment in a conspicuous place in all principal places of activity of the cooperative association.

(c) The notice required by Subsection (b) must include the full text of the proposed amendment and the text of the part of the certificate of formation to be amended.

(d) To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment.

(e) Not later than the 30th day after the date an amendment is adopted by the members of a cooperative association, the cooperative association shall file a certificate of amendment with the secretary of state in accordance with Chapter 4. The certificate of amendment must be:

(1) signed by an authorized officer of the cooperative association; and

(2) in the form required by Section 3.052. (CAA 10.)

Source Law

10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type

of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Revisor's Note

No substantive change is intended, except that the requirement that the amendment be verified by the president and secretary has been deleted as antiquated. All of the other primary organizational statutes have been modernized to require only the signature of an authorized officer.

Revised Law

Sec. 251.053. BYLAWS. (a) Unless the certificate of formation or bylaws of a cooperative association require a greater majority, the bylaws may be adopted, amended, or repealed by a majority vote of the cooperative association's members voting on the matter.

(b) Except as provided by this code, the bylaws may contain:

- (1) requirements for admission to membership;
- (2) requirements for disposal of a member's interest on cessation of membership;
- (3) the time, place, and manner of calling and conducting meetings;
- (4) the number or percentage of the members constituting a quorum;
- (5) the number, qualifications, powers, duties, and term of directors and officers;
- (6) the method of electing, removing, and filling a vacancy of directors and officers;
- (7) the division or classification, if any, of directors to provide for staggered terms;
- (8) the compensation, if any, of the directors;
- (9) the number of directors necessary to constitute a quorum;
- (10) the method for distributing the net savings;
- (11) a requirement that each officer or employee of the cooperative association who handles funds or securities be bonded;

(12) other discretionary provisions of this chapter, Title 1, and Chapters 20 and 22; and

(13) any other provision incident to a purpose or activity of the cooperative association. (CAA 11, 12.)

Source Law

11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

12. Subject to the limitations of this Act, the by-laws may provide for:

(1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;

(2) the time, place and manner of calling and conducting meetings;

(3) the number or percentage of the members constituting a quorum;

(4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) the method of distributing the net savings;

(7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and

(8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Revisor's Note

No substantive change is intended. Section 251.053(b)(12) is included to take into account the fact that certain provisions relating to cooperative associations are now derived from Title 1 and Chapters 20 and 22. [Sections 251.054-251.100 reserved for expansion]

SUBCHAPTER C. MANAGEMENT

Revised Law

Sec. 251.101. BOARD OF DIRECTORS. (a) Except as provided by Subsections (b) and (c), a cooperative association is managed by a board of directors in accordance with Chapter 22.

(b) The board shall contain at least five directors elected by and from the cooperative association's members. A director:

(1) serves a term not to exceed three years as provided by the bylaws; and

(2) holds office until the director is removed or the director's successor is elected.

(c) The bylaws of a cooperative association may:

(1) apportion the number of directors among the units into which the cooperative association may be divided; and

(2) provide for the election of the directors by the respective units to which the directors are apportioned.

(d) An executive committee of the board of directors may be elected in the manner and with the powers and duties specified by the certificate of formation or bylaws. (CAA 21(a), (b), (c).)

Source Law

(a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.102. OFFICERS. (a) The directors of a cooperative association shall annually elect, unless otherwise provided by the bylaws, the following officers for the cooperative

association:

- (1) a president;
- (2) one or more vice presidents; and
- (3) a secretary and treasurer or a

secretary-treasurer.

(b) Any two or more offices, other than the offices of president and secretary, may be held by the same person.

(c) The officers of a cooperative association may be designated by other titles as provided by the certificate of formation or the bylaws of the cooperative association.

(d) A committee duly designated by the board of directors may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

(CAA 22.)

Source Law

22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.103. REMOVAL OF DIRECTORS AND OFFICERS. (a) A director or officer of a cooperative association may be removed from office in the manner provided by the certificate of formation or bylaws of the cooperative association.

(b) If the certificate of formation or bylaws do not provide for the person's removal, a director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer who is to be removed is entitled to be heard at the meeting.

(c) Except as provided by the certificate of formation or

bylaws, a vacancy on the board of directors caused by removal shall be filled by a director elected in the same manner provided by the bylaws for the election of directors. (CAA 23.)

Source Law

23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Revisor's Note

Section 251.103 states that the certificate of formation or bylaws of the cooperative association may establish how an officer or director may be removed and sets forth the same methods of removal as the Cooperative Association Act if the certificate of formation and the bylaws are silent. This section sets forth a default procedure, drawn from the current Cooperative Association Act, if the certificate of formation or bylaws contain no provisions. This section modernizes existing law for cooperative associations by permitting rules governing the removal of directors or officers to be included in the certificate of formation or the bylaws, like other business entities.

Revised Law

Sec. 251.104. REFERENDUM. (a) The certificate of formation or bylaws of a cooperative association may provide for a referendum on any action undertaken by the cooperative association's board of directors if the referendum is:

(1) requested by petition of 10 percent or more of all of the members of the cooperative association; or

(2) requested and approved by the vote of at least a majority of the directors of the cooperative association.

(b) The proposition to be voted on in a referendum authorized under Subsection (a) must be submitted to the members of the cooperative association for consideration within the time specified in the document authorizing the referendum.

(c) A right of a third party that has vested between the time of the action and the time of the referendum is not impaired by the referendum results. (CAA 24.)

Source Law

24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Revisor's Note

No substantive change is intended.

[Sections 251.105-251.150 reserved for expansion]

SUBCHAPTER D. MEMBERSHIP

Revised Law

Sec. 251.151. ELIGIBILITY AND ADMISSION. A person, an unincorporated group or other person organized on a cooperative basis, or a nonprofit group may be admitted to membership in a cooperative association only if the person meets the qualifications for eligibility stated in the certificate of formation or bylaws of the cooperative association. (CAA 26(a).)

Source Law

(a) A natural person, association, trust, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Revisor's Note

No substantive change is intended. The use of the defined term "person" from the Code Construction Act, which is incorporated by reference in the code, eliminates the need for certain current terms.

Revised Law

Sec. 251.152. EXPULSION. (a) A member of a cooperative association may be expelled by the vote of a majority of the cooperative association's members voting at a regular or special meeting.

(b) Not later than the 11th day before the date of the meeting, the cooperative association shall give the member

written notice of the charges. The member is entitled to be heard at the meeting in person or by counsel.

(c) If the cooperative association votes to expel a member, the cooperative association's board of directors shall cause the cooperative association to purchase the member's capital holdings at par value if the purchase does not jeopardize the cooperative association's solvency. (CAA 33.)

Source Law

33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Revisor's Note

No substantive change is intended, except that the revised law makes clear that the cooperative association (and not the board of directors as individuals or a body) is required to purchase the member's capital holdings and thus clarifies a potential ambiguity in the source law.

Revised Law

Sec. 251.153. SUBSCRIBERS. (a) A person is a subscriber of a cooperative association only if the person is:

(1) eligible for membership in the cooperative association under Section 251.151; and

(2) legally obligated to purchase a share or membership in the cooperative association.

(b) The certificate of formation or bylaws of a cooperative association may state whether and the conditions under which voting rights or other membership rights are granted to a subscriber of the cooperative association. (CAA 27, as amended Acts 72nd Leg., R.S., Ch. 897.)

Source Law

27. A natural person, trust, or group eligible for membership and legally obligated to purchase a share or shares of, or

membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.154. LIABILITY. (a) Except as provided by Subsection (b), a member or subscriber of a cooperative association is not jointly or severally liable for a debt of the cooperative association. A subscriber is liable for any unpaid amount on the subscriber's membership certificates or invested capital certificates.

(b) A subscriber who assigns the subscriber's interest in membership certificates or invested capital certificates is jointly and severally liable with the assignee until the appropriate certificates are fully paid. (CAA 32.)

Source Law

32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Revisor's Note

No substantive change is intended.

[Sections 251.155-251.200 reserved for expansion]

SUBCHAPTER E. SHARES

Revised Law

Sec. 251.201. SHARE AND MEMBERSHIP CERTIFICATES: ISSUANCE AND CONTENTS. (a) A cooperative association may not issue a certificate for membership capital or for invested capital until any par value of the certificate has been paid in full.

(b) Each certificate for membership capital issued by a cooperative association must contain a statement of the requirements of Sections 251.202(a) and (b), 251.254, and 251.255.

(c) Each certificate for invested capital issued by a cooperative association must contain a statement of the restrictions on transferability as provided by the cooperative association's bylaws. (CAA 28.)

Source Law

28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.202. TRANSFER OF SHARES AND MEMBERSHIP; WITHDRAWAL. (a) A member who decides to withdraw from a cooperative association shall make a written offer to sell the member's membership certificates to the cooperative association's board of directors.

(b) Not later than the 90th day after the date the directors receive an offer under Subsection (a), the directors may cause the cooperative association to purchase the holdings by paying the member the par value of the certificates and the directors shall cause the cooperative association to reissue or cancel the shares after purchasing the holdings. The directors shall cause the cooperative association to purchase the shares if a majority of the cooperative association's members voting at a regular or special meeting vote to require the purchase.

(c) An investor owning investor certificates must sell, assign, or convey the certificates in accordance with the cooperative association's bylaws. If an investor fails to sell, assign, or convey investor certificates in accordance with the bylaws, the cooperative association on written notice to its directors shall repurchase the certificates by paying the investor the par value of the certificate plus all accrued investment dividends. The certificates must be repurchased not later than the 90th day after the date the cooperative association receives notice of the failure. (CAA 29.)

Source Law

29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Revisor's Note

No substantive change is intended, except that the revised law makes clear that the cooperative association (and not the board of directors as individuals or a body) is required to purchase the member's capital holdings and thus clarifies a potential ambiguity in the source law.

Revised Law

Sec. 251.203. SHARE AND MEMBERSHIP CERTIFICATES; RECALL.

(a) The bylaws of a cooperative association may authorize the cooperative association's board of directors to recall during a specified time and in accordance with the bylaws the membership certificates of a member who fails to patronize the cooperative association. The board may use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount required for membership.

(b) After the board of directors of a cooperative association recalls a membership certificate under Subsection (a), membership in the cooperative association is terminated and the board shall cause the cooperative association to reissue or cancel the certificate. The board of directors may not recall membership certificates if recalling the certificates would

jeopardize the cooperative association's solvency.

(c) The board of directors may use the reserve funds to recall and repurchase the investment certificates of an investor at par value plus any investment dividends due.

(d) The bylaws of a cooperative association may establish specific procedures, terms, and conditions for recalls and repurchases of investment certificates. (CAA 30.)

Source Law

30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Revisor's Note

No substantive change is intended, except that the language in Section 251.203(b) is clarified to indicate that the cooperative association reissues or cancels the certificate and not the board as such.

Revised Law

Sec. 251.204. CERTIFICATES; ATTACHMENT. The minimum amount necessary for membership in a cooperative association, not to exceed \$50, is exempt from attachment, execution, or garnishment for the debts of a member of a cooperative association. If a member's holdings are subject to attachment, execution, or garnishment, the directors of the cooperative association may admit the purchaser to membership or may purchase the holdings at par value. (CAA 31.)

Source Law

31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Revisor's Note

No substantive change is intended.

[Sections 251.205-251.250 reserved for expansion]

SUBCHAPTER F. MEETINGS AND VOTING

Revised Law

Sec. 251.251. MEETINGS. (a) Regular meetings of members of a cooperative association shall be held at least once a year as prescribed by the cooperative association's bylaws.

(b) A special meeting of the members of a cooperative association may be requested by a majority vote of the directors or by written petition of at least one-tenth of the membership of the cooperative association. The secretary shall call a special meeting to be held 30 days after receipt of the request for a special meeting. (CAA 13(a).)

Source Law

(a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.252. NOTICE OF SPECIAL MEETING. The notice of a special meeting of the members of a cooperative association shall state the purpose of the meeting. (CAA 14.)

Source Law

14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Revisor's Note

No substantive change is intended. The provisions of the first sentence of Section 14, Cooperative Association Act, are now contained in Section 6.051.

Revised Law

Sec. 251.253. MEETINGS BY UNITS OF MEMBERSHIP. (a) The certificate of formation or bylaws of a cooperative association may provide for the holding of meetings by units of the membership of the cooperative association and may provide for:

(1) a method of transmitting the votes cast at unit meetings to the central meeting;

(2) a method of representation of units of the membership by the election of delegates to the central meeting; or

(3) a combination of both methods.

(b) Except as otherwise provided by the certificate of formation or bylaws, a meeting by a unit of the membership shall be called and held in the same manner as a regular meeting of the members. (CAA 15.)

Source Law

15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

Revisor's Note

No substantive change is intended. Section 251.253(b) clarifies that a meeting by a unit of the membership must be called and held in the same manner as a regular meeting of the members unless the certificate of formation or bylaws provide otherwise.

Revised Law

Sec. 251.254. ONE MEMBER--ONE VOTE. (a) Except as provided by Subsection (b), a member of a cooperative association has one vote.

(b) If a cooperative association includes among its membership another cooperative association or a group that is organized on a cooperative basis, the voting rights of the cooperative association member or group member may be prescribed by the certificate of formation or bylaws of the cooperative association.

(c) Any voting agreement or other device that is made to evade the one-member-one-vote rule is not enforceable. (CAA 16.)

Source Law

16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.255. NO PROXY. A member is not entitled to vote by proxy. (CAA 17.)

Source Law

17. No member may vote by proxy.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.256. VOTING BY MAIL. (a) The certificate of formation or bylaws of a cooperative association may contain the procedures in Subsection (b) or (c), or both, for voting by mail.

(b) With notice of a meeting sent to members of the cooperative association, the secretary may include a copy of a proposal to be offered at the meeting. If a mail vote is returned to the cooperative association within the specified number of days, the mail vote shall be counted with the votes cast at the meeting.

(c) The secretary may send to a member of the cooperative association who is absent from a meeting an exact copy of the

proposal considered at the meeting. If the vote is returned to the cooperative association within the specified number of days, the mail vote is counted with the votes cast at the meeting.

(d) The certificate of formation or bylaws may state whether and to what extent mail votes are counted in computing a quorum. (CAA 18.)

Source Law

18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.257. VOTING BY MAIL OR BY DELEGATES. (a) If a cooperative association has provided for voting by mail or by delegates, a provision of this chapter referring to votes cast by members of the cooperative association applies to votes cast by mail or by delegates.

(b) A delegate may not vote by mail. (CAA 19, 20.)

Source Law

19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members

applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Revisor's Note

No substantive change is intended.

[Sections 251.258-251.300 reserved for expansion]

SUBCHAPTER G. CAPITAL AND NET SAVINGS

Revised Law

Sec. 251.301. LIMITATIONS ON RETURN ON CAPITAL. (a) Except as otherwise provided by the cooperative association's bylaws, an investment dividend of a cooperative association may not be cumulative and may not exceed eight percent of investment capital.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period. (CAA 25.)

Source Law

25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.302. ALLOCATION AND DISTRIBUTION OF NET SAVINGS.

(a) At least once each year the members or directors of a cooperative association, as provided by the certificate of formation or bylaws of the cooperative association, shall apportion the net savings of the cooperative association in the following order:

(1) subject to Section 251.301, investment dividends payable from the surplus of the total assets over total liabilities may be paid on invested capital or, if authorized by the bylaws, may be paid on the membership certificates;

(2) a portion of the remainder, as determined by the certificate of formation or bylaws, may be allocated to an educational fund to be used in teaching cooperation;

(3) a portion of the remainder may be allocated to funds for the general welfare of the members of the cooperative association;

(4) a portion of the remainder may be allocated to

retained earnings; and

(5) the remainder shall be allocated at the same uniform rate to each patron of the cooperative association in proportion to individual patronage as follows:

(A) for a member patron, the proportionate amount of savings return distributed to the member may be any combination of cash, property, membership certificates, or investment certificates; and

(B) for a subscriber patron, the patron's proportionate amount of savings returns as provided by the certificate of formation or bylaws may be distributed to the subscriber patron or credited to the subscriber patron's account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent a cooperative association engaged in rendering services from disposing of the net savings from the rendering of services in a manner that lowers the fees charged for services or furthers the common benefit of the members.

(c) A cooperative association may adopt a system in which:

(1) the payment of savings returns that would otherwise be distributed are deferred for a fixed period; or

(2) the savings returns distributed are partly in cash or partly in shares, to be retired at a fixed future date, in the order of the shares' serial numbers or issuance dates. (CAA 34.)

Source Law

34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all

patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Revisor's Note

No substantive change is intended.

[Sections 251.303-251.350 reserved for expansion]

SUBCHAPTER H. REPORTS AND RECORDS

Revised Law

Sec. 251.351. RECORDKEEPING. A cooperative association shall keep books and records relating to the cooperative association's business operation in accordance with standard accounting practices. (CAA 35(a).)

Source Law

(a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.352. REPORTS TO MEMBERS. (a) A cooperative association shall submit a written report to its members at the annual meeting of the cooperative association. The annual report must contain:

- (1) a balance sheet;
- (2) an income and expense statement;
- (3) the amount and nature of the cooperative association's authorized, subscribed, and paid-in capital;
- (4) the total number of shareholders;
- (5) the number of shareholders who were admitted to or withdrew from the association during the year;
- (6) the par value of the association's shares;
- (7) the rate at which any investment dividends have been paid; and
- (8) if the cooperative association does not issue shares:
 - (A) the total number of members;
 - (B) the number of members who were admitted to or withdrew from the association during the year; and
 - (C) the amount of membership fees received.

(b) The directors shall appoint a committee composed of members who are not principal bookkeepers, accountants, or employees of the cooperative association to review the cooperative association.

(c) The committee appointed under Subsection (b) shall report on the quality of the annual report required by this section and the bookkeeping system of the cooperative association at the annual meeting. (CAA 35(b), (c), (d).)

Source Law

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

- (1) a balance sheet, and income and expense statement;
- (2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and
- (3) for nonshare associations, the total number of members, the number of

members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The director shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.353. ANNUAL REPORT OF FINANCIAL CONDITION. (a) This section applies only to a cooperative association that has at least 100 members or at least \$20,000 in annual business.

(b) Not later than the 120th day after the date on which the association closes its business each year, a cooperative association shall file in the association's registered office a report of the association's financial condition stating:

- (1) the name of the association;
- (2) the address of the association's principal office;
- (3) the name, address, occupation, and date of expiration of the term of office of each officer and director;
- (4) any compensation paid by the association to each officer or director of the association;
- (5) the amount and nature of the authorized, subscribed, and paid-in capital;
- (6) the total number of shareholders;
- (7) the number of shareholders who were admitted to or withdrew from the association during the year;
- (8) the par value of the association's shares;
- (9) the rate at which any investment dividends have been paid; and
- (10) if the association has no shares:
 - (A) the total number of members;
 - (B) the number of members who were admitted to or withdrew from the association during the year; and
 - (C) the amount of membership fees received.

(c) The report required by Subsection (b) must:

- (1) include a balance sheet and income and expense statement of the cooperative association; and
- (2) be signed by the president and secretary.

(d) A cooperative association that has at least 3,000 members or at least \$750,000 in annual business shall file a copy of the report required by this section with the secretary of state.

(e) A person commits an offense if the person signs a report that is required by this section and contains a materially false statement that the person knows is false. An offense under this subsection is a misdemeanor punishable by:

- (1) a fine of not less than \$25 or more than \$200;
- (2) confinement in county jail for a term of not less than 30 days or more than one year; or
- (3) both the fine and confinement. (CAA 36.)

Source Law

36. (a) Every association having 100 or more members or an annual business amounting to \$20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to \$750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, or by

confinement in the county jail for not less than 30 days nor more than one year, or by both.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.354. FAILURE TO FILE REPORT. (a) If a cooperative association required by Section 251.353 to file a copy of a report with the secretary of state does not file the report within the prescribed time, the secretary of state shall send written notice of the requirement by registered mail to the cooperative association. The notice must be sent to the cooperative association's principal office not later than the 60th day after the date the report becomes due.

(b) If a cooperative association is required by Section 251.353 to file a report at its registered office but not with the secretary of state and fails to file the report within the prescribed time, the secretary of state or any member of the cooperative association may send written notice of the requirement by registered mail to the cooperative association's principal office.

(c) If the cooperative association does not file the report before the 61st day after the date notice is sent under Subsection (a) or (b), a member of the cooperative association or the attorney general may seek a writ of mandamus against the cooperative association and the appropriate officer or officers to compel the filing of the report. The court shall require the cooperative association or the officer who is determined to be at fault to pay the expenses of the proceeding, including attorney's fees. (CAA 37.)

Source Law

37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by

registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Revisor's Note

No substantive change is intended.

[Sections 251.355-251.400 reserved for expansion]

SUBCHAPTER I. WINDING UP AND TERMINATION

Revised Law

Sec. 251.401. VOLUNTARY WINDING UP AND TERMINATION. (a) A cooperative association may wind up and terminate its affairs in accordance with Chapter 11 and Sections 22.301-22.303.

(b) If a cooperative association is directed to wind up and liquidate its affairs, three members of the cooperative association elected by a vote of at least a majority of the members voting shall be designated as trustees on behalf of the cooperative association to:

- (1) pay debts;
- (2) liquidate the cooperative association's assets within the time set in the trustees' designation or any extension of time; and
- (3) distribute the cooperative association's assets in the manner provided by Section 251.403. (CAA 38(a), (c) (part).)

Source Law

(a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

. . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.402. EXECUTION OF CERTIFICATE OF TERMINATION. An officer of a cooperative association or one or more of the persons designated as a liquidating trustee under Section 251.401 shall execute the certificate of termination on behalf of the cooperative association. (CAA 38(a) (part); TNPCA 6.05.A (part).)

Source Law

[CAA 38]

(a) . . . three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

[TNPCA 6.05]

A. . . . articles of dissolution shall be signed on behalf of the corporation by an officer

Revisor's Note

No substantive change is intended except that the authority of a liquidating trustee under Section 251.401 is clarified to extend to execution of the certificate of termination on behalf of the cooperative association. The Cooperative Association Act incorporates the Texas Non-Profit Corporation Act, which provides for execution of the articles of dissolution by an officer.

Revised Law

Sec. 251.403. DISTRIBUTION OF ASSETS. Subject to Sections 11.052 and 11.053(a), the trustees designated under Section 251.401 shall distribute the cooperative association's assets in the following order:

(1) by returning the par value of the investors' capital to investors;

(2) by returning the amounts paid on subscriptions to subscribers for invested capital;

(3) by returning the amount of patronage dividends credited to patrons' accounts to the patrons;

(4) by returning to members their membership capital; and

(5) by distributing any surplus in the manner provided by the certificate of formation:

(A) among the patrons who have been members or subscribers of the cooperative association during the six years preceding the date of dissolution, on the basis of patronage during that period;

(B) as a gift to any cooperative association or other nonprofit enterprise designated in the certificate of formation; or

(C) by a combination of both methods of distribution. (CAA 38(c).)

Source Law

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

(1) by paying its debts and expenses;

(2) by returning to the investors the par value of their capital;

(3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;

(4) by returning to patrons the amount of patronage dividends credited to their accounts;

(5) by returning to members their membership capital; and

(6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Revisor's Note

No substantive change is intended. The reference to Sections 11.052 and 11.053 subjects cooperative associations to the same winding up procedures as other domestic entities, which include ceasing to carry on

its business, selling its assets (to the extent not to be distributed in kind), performing other actions required to wind up its business, and paying its debts and expenses. The provisions of Sections 11.052 and 11.053 are consistent with Texas Non-Profit Corporation Act Sections 6.02 and 7.12, which are currently applicable to cooperative associations.

Revised Law

Sec. 251.404. INVOLUNTARY TERMINATION. A suit for involuntary termination of a cooperative association organized under this chapter may be instituted for the causes and prosecuted in the manner provided by Chapter 11. The assets of a cooperative association that is involuntarily terminated shall be distributed in accordance with Section 251.403. (CAA 38(b).)

Source Law

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

Revisor's Note

No substantive change is intended.

[Sections 251.405-251.450 reserved for expansion]

SUBCHAPTER J. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 251.451. EXEMPTION FROM TAXES. A cooperative association organized under this chapter is exempt from the franchise tax and license fees imposed by the state or a political subdivision of the state, except that a cooperative association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the cooperative association is exempt under that chapter. (CAA 44.)

Source Law

44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if

the association is exempted by that chapter.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 251.452. USE OF NAME "COOPERATIVE." (a) Only a cooperative association governed by this chapter, a group organized on a cooperative basis under another law of this state, or a foreign entity operating on a cooperative basis and authorized to do business in this state may use the term "cooperative" or any abbreviation or derivation of the term "cooperative" as part of its business name or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$25 or more than \$200 for the first month in which the violation occurs;

(2) a fine of not more than \$200 for each month during which a violation occurs after the first month;

(3) confinement in the county jail for not less than 30 days or more than one year; or

(4) a combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court renders a judgment that a person who used the term "cooperative" before September 1, 1975, is not organized on a cooperative basis but is authorized to continue to use the term, the business shall place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type and in letters not less than two-thirds the size of the letters used in the word "cooperative."

(e) Notwithstanding this section, The University Cooperative Society, a domestic nonprofit corporation related to The University of Texas, may continue to use the word "cooperative" in its name. (CAA 39.)

Source Law

39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or

derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Revisor's Note

No substantive change is intended, except that Section 251.452 permits The University Cooperative Society, a domestic nonprofit corporation related to The University of Texas, to use the word "cooperative" in its name.

CHAPTER 252. UNINCORPORATED NONPROFIT ASSOCIATIONS

Revised Law

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common,

nonprofit purpose. A form of joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, regardless of whether the co-owners share use of the property for a nonprofit purpose. (TUUNAA 2.)

Source Law

2. In this Act:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Revisor's Note

No substantive change is intended. Section 252.001 does not define "person" or "state," each of which is defined in the Texas Uniform Unincorporated Nonprofit Association Act. These terms are defined in a similar manner in the Code Construction Act, which is incorporated by reference into the code by Section 1.051.

Revised Law

Sec. 252.002. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY. Principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter. (TUUNAA 3.)

Source Law

3. Principles of law and equity supplement this Act unless displaced by a particular provision of it.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.003. TERRITORIAL APPLICATION. Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, regardless of whether the nonprofit association or a member has any other relationship to this state. (TUUNAA 4.)

Source Law

4. Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.004. REAL AND PERSONAL PROPERTY; NONPROFIT ASSOCIATION AS BENEFICIARY. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will. (TUUNAA 5.)

Source Law

5. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.005. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must contain:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority. (TUUNAA 6.)

Source Law

6. (a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so

authorized in a statement of authority recorded in the county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.006. LIABILITY IN TORT AND CONTRACT. (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract or for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(c) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(d) A member of, or a person considered as a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered as a member by the nonprofit association. (TUUNAA 7.)

Source Law

7. (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member

of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.007. CAPACITY TO ASSERT AND DEFEND; STANDING. (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of members of the nonprofit association if:

(1) one or more of the nonprofit association's members have standing to assert a claim in their own right;

(2) the interests the nonprofit association seeks to protect are germane to its purposes; and

(3) neither the claim asserted nor the relief requested requires the participation of a member. (TUUNAA 8.)

Source Law

8. (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.008. EFFECT OF JUDGMENT OR ORDER. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered as a member by the nonprofit association. (TUUNAA 9.)

Source Law

9. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered by the nonprofit association to be a member.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.009. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE NONPROFIT ASSOCIATION. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined by Section 501(c)(3), Internal Revenue Code, then any distribution must be made to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes. (TUUNAA 10.)

Source Law

10. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code of 1986 as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, [26 U.S.C.A. Sec. 501(c)(3)] then any distribution must be to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.010. BOOKS AND RECORDS. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make the books and records available on request to members of the association for inspection and copying.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general considers necessary and may investigate the association to determine if a violation of any law of this state has occurred. (TUUNAA 11.)

Source Law

11. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make them available to the members of the association for inspection and copying upon request.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general deems necessary and investigate the association to determine if a violation of

any law of this state has occurred.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.011. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. (a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must contain:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the address in this state, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this state, its address out of state; and
- (4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who by signing accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A notice of cancellation must contain:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the date of filing of the nonprofit association's statement appointing the agent; and
- (4) a current street address, if any, of the nonprofit association in this state or, if the nonprofit association does not have an address in this state, its address out of state.

(g) The secretary of state may adopt forms and procedural

rules for filing documents under this section. (TUUNAA 12.)

Source Law

12. (a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the nonprofit association;

(2) the federal tax identification number of the nonprofit association, if applicable;

(3) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A

notice of cancellation must contain the name of the nonprofit association; the federal tax identification number of the nonprofit association, if applicable; the date of filing of its statement appointing the agent; and a current street address of the nonprofit association in this state, and outside this state, if applicable.

(g) The secretary of state may promulgate forms and adopt procedural rules on filing documents under this section.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.012. CLAIM NOT ABATED BY CHANGE. A claim for relief against a nonprofit association does not abate merely because of a change in the members or persons authorized to manage the affairs of the nonprofit association. (TUUNAA 13.)

Source Law

13. A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.013. SUMMONS AND COMPLAINT; SERVICE. (a) In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code.

(b) Not later than the 10th day after the date of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) each agent authorized to receive service of process on behalf of the nonprofit association; and

(2) each officer, managing or general agent, and other person authorized to participate in the management of the affairs of the nonprofit association. (TUUNAA 14.)

Source Law

14. In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code. Within 10 days of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) agents authorized to receive service of process on behalf of the nonprofit association; and

(2) the officers, managing or general agents, and other persons authorized to participate in the management of the affairs of the nonprofit association.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.014. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to make uniform the law with respect to the subject of this chapter among states enacting it. (TUUNAA 15.)

Source Law

15. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.015. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY. If, before September 1, 1995, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or

interest for members of the nonprofit association, on or after September 1, 1995, the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name. (TUUNAA 16.)

Source Law

16. If, before the effective date of this Act, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or interest for members of the nonprofit association, on or after the effective date of this Act the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.016. EFFECT ON OTHER LAW. This chapter replaces existing law with respect to matters covered by this chapter but does not affect other law covering unincorporated nonprofit associations. (TUUNAA 18.)

Source Law

18. This Act replaces existing law with respect to matters covered by this Act but does not affect other law covering unincorporated nonprofit associations.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 252.017. CHAPTER CONTROLLING. (a) Except as provided by Subsection (b), the only provisions of this code that apply to or govern a nonprofit association are the provisions of this chapter.

(b) Chapters 1 and 4 and, if a nonprofit association designates an agent for service of process, Subchapter E, Chapter 5, apply to a nonprofit association. (New.)

Revisor's Note

This section specifies what provisions of this code apply to or govern a nonprofit association.

TITLE 7. PROFESSIONAL ENTITIES

CHAPTER 301. PROVISIONS RELATING TO
PROFESSIONAL ENTITIES

Revised Law

Sec. 301.001. APPLICABILITY OF TITLE. (a) This title applies only to a professional entity or foreign professional entity.

(b) This title does not affect:

(1) the professional or confidential relationship between a person who provides a professional service and the recipient of that service; or

(2) a person's legal remedies against another person who commits an error, omission, negligent or incompetent act, or malfeasance while providing a professional service.

(c) This title does not apply to partnerships or limited liability partnerships. (TPCA 16 (part); TPAA 7; TLLCA 11.05 (part).)

Source Law

[TPCA]

16. The provisions of this Act shall not be construed to alter or affect the professional relationship between a person rendering professional service and a person receiving such service, and all such confidential relationships enjoyed under this state shall remain unchanged. Nothing in this Act shall remove or diminish any rights at law that a person receiving professional service shall have against a person rendering professional service for errors, omissions, negligence, incompetence or malfeasance. . . .

[TPAA]

7. This Act does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving such professional service including liability arising out of such professional service.

[TLLCA]

11.05.A. Notwithstanding anything

contained in Article 4.03 of this Act to the contrary, this Act does not alter or affect the professional relationship between a person rendering professional service and a person receiving the service, and a confidential relationship enjoyed in this state between those persons remains unchanged. This Act does not remove or diminish any rights at law that a person receiving professional service has against a person rendering the service for an error, an omission, negligence, incompetence, or malfeasance. . . .

Revisor's Note

No substantive change is intended. New Subsection (a) of the revised law clarifies the scope of Title 7. The extension of the rule provided by Subsection (b)(2) to professional associations clarifies a slight ambiguity in Section 7, Texas Professional Association Act, and conforms these rules for all types of professional entities.

Subsection (c) clarifies that nothing in Title 7 is intended to prevent a partnership or limited liability partnership from providing professional services. This is so because the defined term "professional entity" does not include partnerships or limited liability partnerships.

Revised Law

Sec. 301.002. CONFLICTS OF LAW. This title prevails over a conflicting provision of Title 1, 2, or 3. (TPCA 5 (part); TPAA 25 (part).)

Source Law

[TPCA]

5. . . . This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law. . . .

[TPAA]

25. . . . This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

Revisor's Note

No substantive change is intended. Title 1 will apply to professional entities. Sections 302.001, 303.001, and 304.001 make portions or all of Titles 2 and 3 applicable to separate types of professional entities. These provisions are intended to provide that, for purposes of the Code, professional corporations and professional associations are treated like for-profit corporations except to the extent modified or qualified by Title 7, and likewise, professional limited liability companies are treated like limited liability companies except to the extent modified or qualified by Title 7. While the supersedence of the Texas Professional Corporation Act and Texas Professional Association Act over the Texas Business Corporation Act is explicit in those acts, it is only implicit in Part Eleven of the Texas Limited Liability Company Act, which governs professional limited liability companies, with respect to the remainder of the Texas Limited Liability Company Act.

Revised Law

Sec. 301.003. DEFINITIONS. In this title:

(1) "Licensed mental health professional" means a person, other than a physician, who is licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide professional therapy or counseling services.

(2) "Professional association" means an association, as distinguished from either a partnership or a corporation, that is:

(A) formed for the purpose of providing the professional service rendered by a doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist, therapeutic optometrist, or licensed mental health professional; and

(B) governed as a professional entity under this title.

(3) "Professional corporation" means a corporation that is:

(A) formed for the purpose of providing a professional service that by law a corporation governed by Title 2 is prohibited from rendering; and

(B) governed as a professional entity under this title.

(4) "Professional entity" means a professional

association, professional corporation, or professional limited liability company.

(5) "Professional individual," with respect to a professional entity, means an individual who is licensed to provide in this state or another jurisdiction the same professional service as is rendered by that professional entity.

(6) "Professional limited liability company" means a limited liability company formed for the purpose of providing a professional service and governed as a professional entity under this title.

(7) "Professional organization," with respect to a professional corporation or a professional limited liability company, means a person other than an individual, whether nonprofit, for-profit, domestic, or foreign and including a nonprofit corporation or nonprofit association, that renders the same professional service as the professional corporation or professional limited liability company only through owners, members, managerial officials, employees, or agents, each of whom is a professional individual or professional organization.

(8) "Professional service" means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by an architect, attorney, certified public accountant, dentist, physician, public accountant, or veterinarian. (TLLCA 11.01.A(3), 11.01.B; TPCA 3(a), (b), 4(b), 12 (part), 15; TPAA 2, as amended Acts 77th Leg., R.S., Chs. 508 and 883, 3.)

Source Law

[TLLCA 11.01.A]

(3) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through

agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

[TLLCA 11.01]

B. In this Act:

(1) "Professional service" means any type of personal service that requires as a condition precedent to the rendering of the service the obtaining of a license, permit, certificate of registration, or other legal authorization, including the personal service rendered by an architect, attorney-at-law, certified public accountant, dentist, doctor, physician, public accountant, surgeon, or veterinarian.

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

(3) "Professional individual," with respect to any professional limited liability company, means an individual who is licensed or otherwise authorized to render the same professional service as such professional limited liability company, either within this state or in any other jurisdiction.

(4) "Professional entity," with respect to any professional limited liability company, means a person (other than an individual), whether organized for profit or not, including corporations organized under the Texas Non-Profit Corporation Act (Article 1396-1.01, Vernon's Texas Civil Statutes), and unincorporated associations governed by the Texas Uniform Unincorporated Nonprofit Association Act (Article 1396-70.01, Vernon's Texas Civil Statutes), that renders the same professional service as such professional

limited liability company only through partners, members, shareholders, managers, directors, associates, officers, employees, or agents who are professional individuals or professional entities.

[TPCA 3]

(a) "Professional Service" means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects, attorneys-at-law, certified public accountants, dentists, public accountants, and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

(b) "Professional Corporation" means a corporation organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation.

[TPCA 4]

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation under this Act to perform professional services that fall within the scope of practice of those practitioners. When professionals engaged in related mental health fields form a

corporation under this Act, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subsection applies continue to exercise regulatory authority over the respective licenses of the professionals.

[TPCA]

12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. . . .

[TPCA]

15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign

professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional legal service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

[TPAA]

2. (A) [as amended Acts 77th Leg., R.S., Ch. 508] Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(A) [as amended Acts 77th Leg., R.S., Ch. 883] Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the

type of professional service for which the association is formed.

(2) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may form an association that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form an association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(4) When doctors of medicine, osteopathy, and podiatry or mental health professionals form an association that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

3. As used in this Act, the term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, and which service by law cannot be performed by a corporation. The term "license" includes a license, certificate of registration or any other evidence of the satisfaction of state requirements.

Revisor's Note

No substantive change is intended. Although the language in the definition of "professional association" contained in Section 301.003 differs from the present language of the Texas Professional Association Act regarding formation of professional associations, the change is consistent with interpretations of existing law. The definition makes clear that the formation of a professional association is limited to persons licensed to practice certain types of professional services specifically described in Section 2 of the Texas Professional Association Act. The section, in part, codifies the decision rendered in *Forrest N. Welmaker, Jr. v. The Honorable Henry Cuellar, Secretary of State*, 37 S.W.3d 550 (Tex. App.--Austin 2001, pet. denied), as well as interpretations of the provisions of the Texas Professional Association Act by the Texas attorney general (Op. Tex. Att'y Gen. No. M-551 (1970)). The expansion of permitted professional services by the Texas Legislature in 1999 and 2001 are carried over into this provision.

Currently, the provisions of the Texas Professional Association Act, Texas Professional Corporation Act, and Texas Limited Liability Company Act only provide examples of those professionals who would be considered a "licensed mental health professional." For purposes of clarification, a definition of the term "licensed mental health professional" is included in Section 301.003. The new definition is consistent with the current provisions of the Texas Professional Association Act, Texas Professional Corporation Act, and Texas Limited Liability Company Act. The definition is similar to the definition of "mental health professional" found in Section 164.003 of the Health and Safety Code.

Revised Law

Sec. 301.004. AUTHORIZED PERSON. For purposes of this title, a person is an authorized person with respect to:

- (1) a professional association if the person is a

professional individual; and

(2) a professional corporation or a professional limited liability company if the person is a professional individual or professional organization. (TPCA 12 (part), 15; TPAA 10; TLLCA 11.01.B(2), (3).)

Source Law

[TPCA]

12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. . . .

[TPCA]

15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to

render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional legal service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

[TPAA]

10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

[TLLCA 11.01.B]

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its

members only professional individuals or professional entities.

(3) "Professional individual," with respect to any professional limited liability company, means an individual who is licensed or otherwise authorized to render the same professional service as such professional limited liability company, either within this state or in any other jurisdiction.

Revisor's Note

The revised law intends no substantive change to the ownership provisions relative to professional associations, which remain limited to professional individuals. However, the inclusion of professional corporations in Section 301.004(2) has the effect of changing the ownership provisions relative to professional corporations found in Section 12, Texas Professional Corporation Act, which limits ownership in a professional corporation, other than a professional legal corporation, to professional individuals.

Revised Law

Sec. 301.005. APPLICATION FOR REGISTRATION OF FOREIGN PROFESSIONAL ENTITY. (a) When required by Chapter 9, a foreign professional entity must file an application for registration to transact business in this state.

(b) The secretary of state may accept an application filed under Subsection (a) only if:

(1) the name and purpose of the foreign professional entity stated in the application comply with this title and Chapters 2 and 5; and

(2) the application states that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under this code. (TPCA 19A(a) (part), (b); TLLCA 11.07.A (part).)

Source Law

[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. . . .

(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.

[TLLCA 11.07]

A. A foreign professional limited liability company may apply for a certificate of authority to perform professional service in this state by filing an application in accordance with Part Seven of this Act. The Secretary of State may not issue the certificate unless the name of the foreign professional limited liability company or the name it elects in this state meets the requirements of Article 11.02 of this Act. . . .

Revisor's Note

Under existing law, a foreign professional association and a foreign professional corporation, other than a professional legal corporation, cannot obtain a certificate of authority from the secretary of state to transact business in Texas. In contrast, the provisions of the Texas Limited Liability Company Act provided a qualification process for a foreign professional limited liability company. Section 301.005 makes Chapter 9 (relating to the registration of foreign entities) applicable to foreign professional entities, thus providing a qualification process otherwise unavailable under existing law to foreign professional corporations and professional associations, so long as reciprocal rights are granted to domestic professional entities by the state where the foreign professional entity is formed.

Revised Law

Sec. 301.006. LICENSE REQUIRED TO PROVIDE PROFESSIONAL SERVICE. (a) A professional association or foreign professional association may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom:

- (1) is a professional individual; and
- (2) is licensed in this state to provide the same professional service provided by the entity.

(b) A professional entity, other than a professional association, may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is an authorized person.

(c) An individual may not, under the guise of employment, provide a professional service in this state unless the individual is licensed to provide the professional service under the laws of this state.

(d) This section may not be construed to prohibit a professional entity or foreign professional entity from employing individuals who do not, according to general custom and practice, ordinarily provide a professional service, including clerks, secretaries, bookkeepers, technicians, nurses, or assistants. (TPCA 15, 19A(a) (part); TPAA 2(B)(1); TLLCA 11.04, 11.07.A.)

Source Law

[TPCA]

15. A professional corporation may render professional service in this state only through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed, and a professional legal corporation may render professional legal service in this state only through its officers, employees and individual agents who are duly licensed to render professional legal service in this state or through agents of the professional legal corporation that are themselves professional legal corporations or foreign professional legal corporations that render professional legal service in this state only through officers, employees and agents who are duly licensed to render professional

legal service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession in this state unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

[TPCA 19A]

(a) . . . 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.

[TPAA 2(B)]

(1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

[TLLCA]

11.04.A. A professional limited liability company may render professional service in this state only through a member, manager, officer, employee, or agent who is:

(1) a professional individual licensed or otherwise authorized to render the professional service in this state; or

(2) a professional entity that renders the professional service in this state only through partners, members, shareholders, managers, directors, associates, officers, employees, or agents who are professional individuals or professional entities licensed or otherwise authorized to render the professional service

in this state.

B. This Article does not prohibit employment by a professional limited liability company of clerks, secretaries, bookkeepers, technicians, nurses, assistants, and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required. A person may not, under the guise of employment, practice a profession in this state unless licensed or otherwise legally authorized to practice that profession under the laws of this state.

[TLLCA 11.07]

A. A foreign professional limited liability company may apply for a certificate of authority to perform professional service in this state by filing an application in accordance with Part Seven of this Act. The Secretary of State may not issue the certificate unless the name of the foreign professional limited liability company or the name it elects in this state meets the requirements of Article 11.02 of this Act. A foreign professional limited liability company may render professional service in this state only through a member, manager, officer, employee, or agent described in Section A of Article 11.04 of this Act.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 301.007. CERTAIN REQUIREMENTS TO BE OWNER, GOVERNING PERSON, OR OFFICER. (a) A person may be an owner of a professional entity or a governing person of a professional limited liability company only if the person is an authorized person.

(b) An individual may be an officer of a professional entity or a governing person of a professional association or professional corporation only if the individual is a professional individual. (TPCA 9, 10, 12; TPAA 2(B)(1), 9(C), 10; TLLCA 11.03.A (part).)

Source Law

[TPCA]

9. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors.

10. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals, and in the case of a professional legal corporation, individuals, professional legal corporations and foreign professional legal corporations, which are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the

provisions of the Texas Business Corporation Act.

[TPAA 2(B)]

(1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

[TPAA 9]

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

[TPAA]

10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

[TLLCA 11.03]

A. A person who is not a professional individual or professional entity may not be a member, manager, or officer of the professional limited liability company. . . .

Revisor's Note

The revised law effects a change in the ownership provisions relative to professional corporations, other than professional legal corporations. Presently, a professional legal corporation may be owned by professional individuals and by professional legal corporations. Ownership in a professional corporation, other than a professional legal corporation, is limited to professional individuals. In contrast, the provisions relating to professional limited liability companies permit ownership by

professional entities, as well as professional individuals. Section 301.007, and the definition of "authorized person" found in Section 301.004, in effect open up ownership of professional corporations to professional organizations. Ownership in professional associations, however, remains limited to professional individuals.

Revised Law

Sec. 301.008. DUTIES AND POWERS OF OWNER OR MANAGERIAL OFFICIAL WHO CEASES TO BE LICENSED; PURCHASE OF OWNERSHIP INTEREST. (a) A managerial official of a professional entity who ceases to satisfy the requirements of Section 301.007 shall promptly resign the person's position and employment with the entity.

(b) An owner of a professional entity who ceases to be an authorized person as required by Section 301.007 shall promptly relinquish the person's ownership interest in the entity.

(c) A person who succeeds to the ownership interest of an owner shall promptly relinquish the person's financial interest in the entity if the person is not an authorized person as required by Section 301.007.

(d) A professional entity shall purchase or cause to be purchased the ownership interest in the entity of a person who is required to relinquish the person's financial interest in the entity under this section. The price and terms of a purchase of an ownership interest required under this subsection may be provided by the governing documents of the entity or an applicable agreement.

(e) A person who owns all of the outstanding ownership interests in a professional entity but is required under this section to relinquish the person's financial interest in the entity may act as a managerial official or owner of the entity only for the purpose of winding up the affairs of the entity, including selling the outstanding ownership interests and other assets of the entity. (TPCA 14; TLLCA 11.03.B, C.)

Source Law

[TPCA]

14. If any shareholder, officer or director of a professional corporation, or any agent or employee thereof who has been rendering professional service for or with it of the same type which such professional corporation was organized to render, becomes legally disqualified to render such professional service, he shall sever all employment with such professional corporation

and shall terminate all financial interest therein forthwith; and such corporation shall thereupon purchase or cause to be purchased from him all shares owned by him in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if he was the sole shareholder of the professional corporation, he may continue to act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service. Likewise, if any person who is not licensed or duly authorized to render the professional service which a professional corporation was organized to render should succeed to the interest of any shareholder of such professional corporation, the person holding such interest shall terminate all financial interest in such professional corporation forthwith; and such corporation shall thereupon purchase or cause to be purchased from such person all shares owned by such person in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if such person has succeeded to all of the shares of the professional corporation, such person may act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service.

[TLLCA 11.03]

B. If a member, manager, or officer of a professional limited liability company ceases to be a professional individual or

professional entity, the person shall sever all employment with the professional limited liability company and immediately terminate all financial interest in the company. The professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person is the sole member of the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or outstanding membership interests in the professional limited liability company, but not including rendering professional service.

C. If a person who is not a professional individual or a professional entity succeeds to the interest of a member of the professional limited liability company, the person holding the interest shall immediately terminate all financial interest in the professional limited liability company, and the professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person succeeded to all of the membership interests in the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or the outstanding membership

interests in the professional limited liability company, but not including rendering professional service.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 301.009. TRANSFER OF OWNERSHIP INTEREST. Except as limited by the governing documents of the professional entity or an applicable agreement, an ownership interest in a professional entity may be transferred only to:

- (1) an owner of the entity;
- (2) the entity itself; or
- (3) an authorized person. (TPCA 12 (part); TPAA 10; TLLCA 11.03.A (part).)

Source Law

[TPCA]

12. . . . Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person, and in the case of a professional legal corporation, to any professional legal corporation or foreign professional legal corporation, who or which is not a shareholder, provided such person is duly licensed or qualified under the laws of this state, or in the case of a professional legal corporation, such person, professional legal corporation or foreign professional legal corporation is duly licensed or otherwise duly authorized to render professional legal service, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. . . .

[TPAA]

10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that

for which the professional association was formed.

[TLLCA 11.03]

A. . . . A membership interest in the professional limited liability company may not be transferred to a person who is not a professional individual or professional entity.

Revisor's Note

No substantive change is intended. Use of the terminology of the code makes the provision clearer and more easily understood.

Revised Law

Sec. 301.010. LIABILITY. (a) A professional entity is jointly and severally liable for an error, omission, negligent or incompetent act, or malfeasance committed by a person who:

(1) is an owner, managerial official, employee, or agent of the entity; and

(2) while providing a professional service for the entity or during the course of the person's employment, commits the error, omission, negligent or incompetent act, or malfeasance.

(b) An owner, managerial official, employee, or agent of a professional entity other than an owner, managerial official, employee, or agent liable under Subsection (a) is not subject to the same liability imposed on the professional entity under this section.

(c) If a person described by Subsection (a) is a professional organization, the professional organization and the professional entity are jointly and severally liable for the error, omission, negligent or incompetent act, or malfeasance committed by the person, or the person's owner, member, managerial official, employee, or agent, while providing a professional service for the professional entity. (TPCA 16 (part); TPAA 24 (part); TLLCA 11.05 (part).)

Source Law

[TPCA]

16. . . . The corporation (but not the individual shareholders, officers or directors) shall be jointly and severally liable with the officer, employee or agent rendering professional service for such professional errors, omissions, negligence, incompetence or malfeasance on the part of such officer, employee or agent when such

officer, employee or agent is in the course of his employment for the corporation.

[TPAA]

24. . . . The association (but not the individual members, officers or directors) shall be jointly and severally liable with the officer or employee furnishing professional services for such professional errors, omissions, negligence, incompetence or malfeasance on the part of such officer or employee when such officer or employee is in the course of his employment for the association.

[TLLCA]

11.05.A. . . . A professional limited liability company, but not the other members, managers, officers, employees, or agents of such professional limited liability company (or their respective members, managers, officers, employees, or agents), is jointly and severally liable with a member, manager, officer, employee, or agent rendering professional service for an error, omission, negligence, incompetence, or malfeasance on the part of the member, manager, officer, employee, or agent when the member, manager, officer, employee, or agent is rendering professional service in the course of employment for the professional limited liability company. If the member, manager, officer, employee, or agent rendering such professional service in such circumstances is itself a professional entity, then the professional limited liability company and such professional entity are jointly and severally liable with the partner, member, shareholder, manager, director, associate, officer, employee, or agent of such professional entity through which such professional entity renders such professional service for an error, omission, negligence, incompetence, or malfeasance on the part of such partner, member, shareholder, manager, director, associate, officer, employee, or agent of such professional entity.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 301.011. EXEMPTION FROM SECURITIES LAWS. (a) A sale, issuance, or offer for sale of an ownership interest in a professional entity to a person authorized under this title to own an ownership interest in the professional entity is exempt from any state law, other than this code, that regulates the sale, issuance, or offer for sale of securities.

(b) A transaction described by Subsection (a) does not require the approval of or other action by a state official or regulatory agency authorized to regulate the sale, issuance, or offer for sale of securities. (TPCA 19; TLLCA 11.06.)

Source Law

[TPCA]

19. The sale, issuance or offering of any capital stock of a professional corporation to persons permitted by the provisions of this Act to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Act, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities; and the sale, issuance or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance or offering of securities.

[TLLCA]

11.06.A. The sale, issuance, or offering of membership interests of a professional limited liability company to persons permitted by this Part to own the membership interests is exempt from all laws of this state, other than this Act, that provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities. The sale, issuance, or offering of membership interests to those persons is legal without any action or approval on the part of any official or state regulatory agency authorized to license, regulate, or supervise

the sale, issuance, or offering of securities.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 301.012. JOINT PRACTICE BY CERTAIN PROFESSIONALS. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical Examiners and persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners may jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional entity that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(c) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical Examiners and persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board may, subject to the provisions regulating those professionals, jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(d) Only a physician, optometrist, or therapeutic optometrist may have an ownership interest in a professional association or professional limited liability company formed under Subsection (c).

(e) An entity formed under Subsection (c) is not prohibited from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

(f) When doctors of medicine, osteopathy, and podiatry, or doctors of medicine, osteopathy, and optometry or therapeutic optometry, or mental health professionals form a professional entity as provided by Subsections (a), (b), and (c), the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(g) The state agencies exercising regulatory control over

professions to which this section applies continue to exercise regulatory authority over their respective licenses. (TPCA 4(b); TPAA 2(B); TLLCA 11.01.A(3), (4).)

Source Law

[TPCA 4]

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation under this Act to perform professional services that fall within the scope of practice of those practitioners. When professionals engaged in related mental health fields form a corporation under this Act, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subsection applies continue to exercise regulatory authority over the respective licenses of the professionals.

[TPAA 2]

(B) Licenses. (1) Except as provided by this subsection, all members of the association shall be licensed to perform the type of professional service for which the association is formed.

(2) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may form an association that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(3) Professionals, other than

physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form an association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(4) When doctors of medicine, osteopathy, and podiatry or mental health professionals form an association that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

[TLLCA 11.01.A]

(3) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would

assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

(4) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When mental health professionals organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

Revisor's Note

Section 2.004 of the code permits a professional entity to render more than one type of professional service if expressly authorized under state law regulating the professional services. With limited exceptions, present law limits the purpose of a professional corporation and a professional limited liability company to providing one specific professional service. Various exceptions allowing joint ownership of professional entities by certain kinds of professionals previously scattered throughout the Texas Professional Corporation Act, Texas Professional Association Act, and Chapter 11,

Texas Limited Liability Company Act, are now combined in Section 301.012. This combination simplifies the law and makes it easier to locate and comprehend.

The revised law gives effect to Section 5.12, Article 4495b, and Article 4552-5.22, which permit doctors of medicine or osteopathy and optometrists or therapeutic optometrists to organize, jointly own, and manage a legal entity, including a professional limited liability company or professional association, for the delivery of health care services. The current provisions of the Texas Professional Association Act and the Texas Limited Liability Company Act do not expressly recognize that an optometrist or therapeutic optometrist may jointly form or own a professional association or professional limited liability company with any other professional as permitted by Subsections (c) and (d) of Section 301.012.

CHAPTER 302. PROVISIONS RELATING TO PROFESSIONAL ASSOCIATIONS

Revised Law

Sec. 302.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21 governing a for-profit corporation apply to a professional association, unless there is a conflict with this title. (TPAA 25.)

Source Law

25. The Texas Business Corporation Act shall be applicable to professional associations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional associations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

Revisor's Note

No substantive change is intended. See the revisor's note to Section 301.002.

Revised Law

Sec. 302.002. DURATION OF PROFESSIONAL ASSOCIATION. A professional association continues:

(1) for all purposes as a separate entity independent of the association's members until:

(A) the expiration of the period of duration stated in the certificate of formation; or

(B) the association is wound up and terminated in the manner provided by the certificate of formation or, if the certificate of formation does not provide a manner for winding up and termination, by a two-thirds vote of the association's members; and

(2) in existence notwithstanding:

(A) the death, insanity, incompetency, felony conviction, resignation, withdrawal, transfer of ownership interest, or expulsion of a member other than the last surviving member of the association;

(B) the admission of a new member or the transfer of ownership interest to a new or existing member; or

(C) the occurrence of an event that would require the winding up of a partnership under state law or similar circumstances. (TPAA 8(B).)

Source Law

[8]

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

(1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

(2) shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of membership, retirement, or expulsion of any one or more of the members (except the last surviving member), the admission of or transfer of membership to any new member or members, or the happening of any other event, which under the law of this state and under like circumstances, would work a dissolution of a partnership.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 302.003. AMENDMENT OF CERTIFICATE OF FORMATION. (a) A professional association may amend the association's certificate of formation as provided by:

- (1) Chapter 3;
- (2) the procedure for amendment stated in the certificate of formation; or
- (3) if the certificate of formation does not provide a procedure for amending the certificate, a two-thirds vote of the association's members.

(b) A professional association is not required to amend the association's certificate of formation to reflect a change in membership or a transfer of ownership interests in the association. (TPAA 14.)

Source Law

14. (A) Authority to amend. A professional association may amend its articles of association, from time to time, in accordance with the procedure for amendment stated therein or if none is stated therein, by two-thirds vote of its members.

(B) Acts not requiring amendment. Changes in membership or transfer of shares or units of ownership shall not require amendment.

Revisor's Note

No substantive change is intended. A cross-reference is added to Chapter 3, which provides more detailed procedural provisions regarding amendment of the certificate of formation.

Revised Law

Sec. 302.004. ADOPTION OF BYLAWS; DELEGATION OF AUTHORITY. (a) The members of a professional association may adopt bylaws for the association.

(b) The authority to adopt bylaws for a professional association granted under Subsection (a) may be delegated under the certificate of formation to the governing authority of the association. (TPAA 9(D).)

Source Law

(D) Bylaws. The members may adopt such bylaws as they may deem proper, or the power to promulgate bylaws of the association may be delegated by the articles of association to the Board of Directors or Executive

Committee, as the members may decide.

Revisor's Note

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law

Sec. 302.005. GOVERNING AUTHORITY. (a) A professional association shall be governed by:

- (1) a board of directors; or
- (2) an executive committee.

(b) The governing authority of a professional association shall be elected by the members of the association. (TPAA 9(A).)

Source Law

(A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by, and the business and affairs of a professional association shall be managed under the direction of, a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

Revisor's Note

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law

Sec. 302.006. MEMBERS' VOTING RIGHTS. A member of a professional association is entitled to cast a vote at a meeting of the members as provided by the certificate of formation of the association. (TPAA 9(E).)

Source Law

(E) Members' voting rights. Each member shall have power to cast such vote or votes at the meeting of the members as the articles of association shall provide.

Revisor's Note

No substantive change is intended. The new term "certificate of formation" is substituted for "articles of association" without intent to make a substantive change.

Revised Law

Sec. 302.007. ELECTION OF OFFICERS. The governing authority of a professional association shall elect the officers of the association. (TPAA 9(A).)

Source Law

(A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by, and the business and affairs of a professional association shall be managed under the direction of, a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

Revisor's Note

No substantive change is intended. The new term "governing authority" is substituted for "Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law

Sec. 302.008. OFFICER AND GOVERNING PERSON ELIGIBILITY REQUIREMENTS. (a) Only a member of the professional association is eligible to serve as an officer or governing person of a professional association.

(b) Except as provided by Subsection (c), a person is not required to be a governing person of a professional association to serve as an officer of the association.

(c) Only a governing person of a professional association is eligible to serve as the president of the professional association. (TPAA 9(C).)

Source Law

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or

Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

Revisor's Note

No substantive change is intended. The code provision uses the new terminology of the code, substituting "governing person" for "member of the Board of Directors or Executive Committee" without intent to make a substantive change.

Revised Law

Sec. 302.009. EMPLOYMENT OF AGENTS AND EMPLOYEES. The officers of a professional association may employ agents or employees for the association as the officers consider advisable. (TPAA 9(F).)

Source Law

(F) Agents and employees. The officers of the professional association may employ such agents or employees of the association as they may deem advisable.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 302.010. LIMITATION ON MEMBER'S POWER TO BIND ASSOCIATION. A member of a professional association is not entitled to bind the association within the scope of the association's business or profession merely by virtue of being a member of the professional association. (TPAA 9(B).)

Source Law

(B) Member's power to bind. No member shall have the power to bind the association within the scope of the association's business or profession merely by virtue of his being a member of the association.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 302.011. DIVISION OF PROFITS. The members of a professional association shall divide the profits derived from the association in the manner provided by the governing documents of the association. (TPAA 2(A), as amended Acts 77th Leg., R.S., Chs. 508 and 883.)

Source Law

(A) [as amended Acts 77th Leg., R.S., Ch. 508] Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or optometry or therapeutic optometry, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(A) [as amended Acts 77th Leg., R.S., Ch. 883] Formation. Any one or more persons duly licensed to practice a profession, including podiatry, dentistry, or chiropractic, under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

Revisor's Note

No substantive change is intended. The new term "governing documents" is substituted for "articles of association or bylaws" without intent to make a substantive change.

Revised Law

Sec. 302.012. ANNUAL STATEMENT REQUIRED. (a) In June of each year, a professional association shall file with the secretary of state a statement that:

(1) lists:

(A) the name and address of each member of the association; and

(B) the name of each officer and governing person of the association; and

(2) states that each member of the association is licensed to provide the same type of professional service provided by the association.

(b) The statement required by this section must be executed by an officer of the association on behalf of the association.

(TPAA 21.)

Source Law

21. A professional association shall in June of each year file with the Secretary of State a statement showing the name and address of the association; the names and addresses of all members of the association, and all officers and all members of the Board of Directors or Executive Committee; and shall state that all members are licensed to perform the type of professional service for which the association is formed. The statement shall be on such form as the Secretary of State shall prescribe and furnish. It shall be executed on behalf of the association by an officer.

Revisor's Note

No substantive change is intended. The terminology "governing person" is substituted for "member of the Board of Directors or Executive Committee."

Revised Law

Sec. 302.013. WINDING UP AND TERMINATION; CERTIFICATE OF TERMINATION. (a) A professional association may wind up and terminate the association's business as provided by:

- (1) the association's certificate of formation; or
- (2) if the certificate of formation does not provide for the winding up and termination of the association, a two-thirds vote of the association's members.

(b) Except as provided by Subsection (c), a certificate of termination filed in accordance with Chapter 11 must be executed by an officer of the professional association on behalf of the association.

(c) If a professional association does not have any living officer, the certificate of termination must be executed by the legal representative of the last surviving officer of the association. (TPAA 8(B) (part), 18 (part).)

Source Law

[8]

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

- (1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

. . .

18. The articles of dissolution shall be executed on behalf of the association by an officer. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. . . .

Revisor's Note

No substantive change is intended. The term "certificate of termination" is substituted for "articles of dissolution" without intent to make a substantive change. A cross-reference is made to Chapter 11, which provides the requirements for the certificate of termination currently set forth in Section 18, Texas Professional Association Act.

CHAPTER 303. PROVISIONS RELATING TO
PROFESSIONAL CORPORATIONS

Revised Law

Sec. 303.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21 governing a for-profit corporation apply to a professional corporation, unless there is a conflict with this title. (TPCA 5 (part).)

Source Law

5. The Texas Business Corporation Act shall be applicable to professional corporations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other business corporations except insofar as the same may be limited or enlarged by this Act. . . .

Revisor's Note

No substantive change is intended. See Revisor's Note to Section 301.002.

Revised Law

Sec. 303.002. AUTHORITY AND LIABILITY OF SHAREHOLDER. (a) A shareholder of a professional corporation is not required to supervise the performance of duties by an officer or employee of

the corporation.

(b) A shareholder of a professional corporation is subject to no greater liability than a shareholder of a for-profit corporation. (TPCA 5 (part).)

Source Law

5. . . . A shareholder of a professional corporation, as such, shall have no duty to supervise the manner or means whereby the officers or employees of the corporation perform their respective duties. Shareholders of a professional corporation, as such, shall have no greater liability than do shareholders, as such, of other business corporations. . . .

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 303.003. NOTICE OF RESTRICTION ON TRANSFER OF SHARES. Any restriction on the transfer of shares in a professional corporation that is imposed by the governing documents of the corporation or an applicable agreement must be:

- (1) noted on each certificate representing the shares;
- or
- (2) incorporated by reference in the manner provided by Chapter 21. (TPCA 12 (part).)

Source Law

12. . . . Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the provisions of the Texas Business Corporation Act.

Revisor's Note

No substantive change is intended. The new term "governing documents" is substituted for the terms "Articles of Incorporation" and "bylaws" without intent to make a substantive change. A cross-reference is made to the code chapter containing the provisions relative to for-profit corporations.

Revised Law

Sec. 303.004. REDEMPTION OF SHARES; PRICE AND TERMS. (a) A professional corporation may redeem shares of a shareholder, including a deceased shareholder.

(b) The price and other terms of a redemption of shares may be:

(1) agreed to between the board of directors of the professional corporation and the shareholder or the shareholder's personal representative; or

(2) specified in the governing documents of the professional corporation or an applicable agreement. (TPCA 13.)

Source Law

13. A professional corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws, or any applicable stock purchase or redemption agreement.

Revisor's Note

No substantive change is intended.

Revised Law

Sec. 303.005. EXISTENCE OF PROFESSIONAL CORPORATION BEFORE WINDING UP AND TERMINATION. A professional corporation continues to exist until the winding up and termination of the corporation as provided by Chapter 11 without regard to:

(1) the death, incompetency, bankruptcy, resignation, withdrawal, retirement, or expulsion of any shareholder of the corporation;

(2) the transfer of shares to a new shareholder; or

(3) the occurrence of an event requiring the winding up of a partnership. (TPCA 17 (part).)

Source Law

17. Unless the Articles of Incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity for all purposes and for such period of time as is provided in the Articles of Incorporation until dissolved by a vote of its shareholders. A professional corporation shall continue to exist regardless of the death, incompetency, bankruptcy, resignation,

withdrawal, retirement or expulsion of any one or more of its shareholders or the transfer of any of its shares to any new holder or the happening of any other event which under the laws of this state and under like circumstances would cause a dissolution of a partnership, it being the intent of this Section that such professional corporation shall have continuity of life independent of the life or status of its shareholders. . . .

Revisor's Note

The revised law varies from the first sentence of the source law in that the revised law presumes that domestic entities exist perpetually unless otherwise provided in the governing documents of the entity. See Section 3.003 and its revisor's note. Under the code, a "certificate of formation" (i.e., the articles of incorporation under present statutory language) need only state a period of duration if the entity is not formed to exist perpetually.

Revised Law

Sec. 303.006. WINDING UP AND TERMINATION OF PROFESSIONAL CORPORATION. A shareholder of a professional corporation may not wind up the affairs of and terminate the corporation independently of other shareholders of the corporation. (TPCA 17 (part).)

Source Law

17. . . . No shareholder shall have power to dissolve the professional corporation by his independent act of any kind.

Revisor's Note

No substantive change is intended.

CHAPTER 304. PROVISIONS RELATING TO PROFESSIONAL
LIMITED LIABILITY COMPANIES

Revised Law

Sec. 304.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING LIMITED LIABILITY COMPANIES. Title 3 applies to a professional limited liability company, unless there is a conflict with this title. (TLLCA 11.01.B(2).)

Source Law

[11.01.B]

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only professional individuals or professional entities.

Revisor's Note

No substantive change is intended. See Revisor's Note to Section 301.002.

TITLE 8. MISCELLANEOUS AND TRANSITION PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Revised Law

Sec. 401.001. DEFINITIONS. In this title:

(1) "Mandatory application date" means:

(A) for an entity subject to this code under Section 402.001, January 1, 2006;

(B) for an entity subject to this code under Section 402.003 or 402.004, the date of completion of the action required by that section but no earlier than January 1, 2006; and

(C) for any other entity, January 1, 2010.

(2) "Prior law" means the applicable law in effect before January 1, 2006.

CHAPTER 402. MISCELLANEOUS AND TRANSITION PROVISIONS

Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. At the effective date of this code, this code applies to:

(1) a domestic entity formed on or after the effective date of this code;

(2) a foreign filing entity or other foreign entity that has not registered with the secretary of state to transact business in this state before the effective date of this code; and

(3) a foreign nonfiling entity.

Sec. 402.002. EARLY EFFECTIVENESS OF FEES. On or after the effective date of this code, the fees required by Chapter 4 apply to all filings made with the secretary of state, including comparable filings under prior law, regardless of whether an entity is subject to or has adopted this code. The intent of this section is to:

(1) require a filing fee for all documents filed under either this code or the prior law without regard to the difference in designation of the document; and

(2) make the filing fees described by Subdivision (1) uniform from the effective date of this code.

Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC ENTITY. (a) A domestic entity formed before the effective date

of this code may voluntarily elect to adopt and become subject to this code by:

- (1) complying with the procedures to amend its governing documents to adopt this code and, if necessary, to cause its governing documents to comply with this code; and

- (2) if the domestic entity is a filing entity, filing with the secretary of state in accordance with Chapter 4:

- (A) a statement that the filing entity is electing to adopt this code; and

- (B) if necessary, a certificate of amendment that would cause its certificate of formation to comply with this code.

(b) If amendments to the governing documents of a domestic entity that are necessary to conform the governing documents to this code would not require, under prior law, the vote or consent of the owners or members of the entity, this code and any amendment to the governing documents required by this section may be adopted by the governing authority only in the manner provided for an amendment of the particular governing document.

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN ENTITY. A foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code may voluntarily elect to adopt and become subject to this code by filing with the secretary of state in accordance with Chapter 4:

- (1) a statement that the foreign filing entity is electing to adopt this code; and

- (2) an amendment to its application for registration that would cause its application for registration to comply with this code.

Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES ON MANDATORY APPLICATION DATE. On January 1, 2010, if a domestic filing entity formed before the effective date of this code or a foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code has not taken the actions specified by Section 402.003(a) or 402.004 to elect to adopt this code:

- (1) this code applies to the entity and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title;

- (2) the entity is not considered to have failed to comply with this code if the entity's certificate of formation or application for registration, as appropriate, does not comply with this code;

- (3) if the entity is a domestic filing entity, the entity shall conform its certificate of formation to the requirements of this code when it next files an amendment to its certificate of formation; and

(4) if the entity is a foreign filing entity, the entity shall conform its application for registration to the requirements of this code when it next files an amendment to its application for registration.

Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND TRANSACTIONS. (a) Except as otherwise expressly provided by this title, all of the provisions of this code govern acts, contracts, or other transactions by an entity subject to this code or its managerial officials, owners, or members that occur on or after the mandatory application date. The prior law governs the acts, contracts, or transactions of the entity or its managerial officials, owners, or members that occur before the mandatory application date.

(b) No requirement under Subchapter E, Chapter 3, with respect to matters to be set forth on certificates evidencing ownership interests of partnerships shall apply to or affect certificates outstanding when the requirement first becomes applicable to the certificates, but the requirement applies to all subsequently issued certificates whether in connection with an original issue of ownership interests, a transfer of ownership interests, or otherwise.

Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any proposed indemnification by a domestic entity after the mandatory application date, regardless of whether the events on which the indemnification is based occurred before or after the mandatory application date. A statement relating to indemnification contained in the governing documents of a domestic entity on the mandatory application date may not be construed as limiting the indemnification authorized by Chapter 8 unless it expressly states that is the intent.

Sec. 402.008. MEETINGS OF OWNERS AND MEMBERS; CONSENTS; VOTING OF INTERESTS. (a) Except as provided by Subsection (b) and regardless of whether a proxy or consent was executed by an owner or member before the mandatory application date, Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of owners or members held on or after the mandatory application date;

(2) an action undertaken by owners or members under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of owners or members and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to owners or

members entitled to vote at the meeting.

Sec. 402.009. MEETINGS OF GOVERNING AUTHORITY AND COMMITTEES; CONSENTS. (a) Except as provided by Subsection (b), Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of the governing authority or a committee of the governing authority held on or after the mandatory application date;

(2) an action undertaken by the governing authority or a committee of the governing authority under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of the governing authority or a committee of the governing authority and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to governing persons entitled to vote at the meeting.

Sec. 402.010. SALE OF ASSETS, MERGERS, REORGANIZATIONS, CONVERSIONS. Chapter 10 and any other applicable provisions of this code apply to a transaction consummated by an entity after the mandatory application date, except that if a required approval of the owners or members of the entity has been given before the mandatory application date or has been given after the mandatory application date but at a meeting of owners or members initially called for a date before the mandatory application date, the transaction shall be governed by the prior law.

Sec. 402.011. WINDING UP AND TERMINATION. (a) Chapter 11 applies to:

(1) an action for involuntary or judicial winding up and termination commenced after the mandatory application date; or

(2) a voluntary winding up and termination proceeding initiated after the mandatory application date by:

(A) the governing authority;

(B) the terms of the governing documents; or

(C) applicable law.

(b) The prior law governs:

(1) an action described by Subsection (a)(1) that is pending on the mandatory application date; or

(2) a proceeding described by Subsection (a)(2) initiated before the mandatory application date.

Sec. 402.012. REGISTRATION OF CERTAIN FOREIGN ENTITIES. A foreign entity that has transacted intrastate business in this state before the mandatory application date and that is required

by Chapter 9 to register to transact business is not subject to a direct or indirect penalty as a result of failure to register under Chapter 9 if the application for registration is filed not later than the 30th day after the mandatory application date.

Sec. 402.013. ENTITIES UNDER SUSPENSION FOR NONFILING OF REQUIRED REPORTS OR PAYMENT OF TAXES; APPLICABILITY OF PRIOR LAW.

(a) If the rights, privileges, and powers of a domestic filing entity have been suspended and are still suspended immediately before the mandatory application date under the prior law, this code applies to the entity on the mandatory application date.

(b) If the rights, privileges, and powers of a domestic filing entity have been suspended and are still suspended under the Tax Code immediately before the mandatory application date, the suspension continues to apply to the entity until the rights, privileges, and powers are restored by the secretary of state under that code.

Sec. 402.014. MAINTENANCE OF PRIOR ACTION. Except as expressly provided by this title, this code does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

Appendix A

SECTION 2. CONFORMING AMENDMENT. Part Eleven, Texas Business Corporation Act, is amended by adding Article 11.02 to read as follows:

Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 3. CONFORMING AMENDMENT. Part Seven, Texas Miscellaneous Corporation Laws Act (Article 1302-7.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 7.09 to read as follows:

Art. 7.09. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 4. CONFORMING AMENDMENT. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 11.02 to read as follows:

Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 5. CONFORMING AMENDMENT. The Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil

Statutes) is amended by adding Section 47 to read as follows:

Sec. 47. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to an association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 6. CONFORMING AMENDMENT. The Texas Uniform Unincorporated Nonprofit Association Act (Article 1396-70.01, Vernon's Texas Civil Statutes) is amended by adding Section 19 to read as follows:

Sec. 19. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a nonprofit association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 7. CONFORMING AMENDMENT. The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) is amended by adding Section 21 to read as follows:

Sec. 21. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a professional corporation to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 8. CONFORMING AMENDMENT. The Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) is amended by adding Section 27 to read as follows:

Sec. 27. APPLICABILITY; EXPIRATION. (A) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a professional association to which the Business Organizations Code applies.

(B) This Act expires January 1, 2010.

SECTION 9. CONFORMING AMENDMENT. Part Eight, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 8.13 to read as follows:

Art. 8.13. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a limited liability company to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 10. CONFORMING AMENDMENT. Article 13, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by adding Section 13.10 to read as follows:

Sec. 13.10. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a limited partnership to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 11. CONFORMING AMENDMENT. Article XI, Texas Revised

Partnership Act (Article 6132b-11.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 11.05 to read as follows:

Sec. 11.05. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a partnership to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 12. CONFORMING AMENDMENT. The Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes) is amended by adding Section 29.10 to read as follows:

Sec. 29.10. APPLICABILITY; EXPIRATION. (A) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a real estate investment trust to which the Business Organizations Code applies.

(B) This Act expires January 1, 2010.

SECTION 13. CONFORMING AMENDMENT. Article 1399, Revised Statutes, is amended to read as follows:

Art. 1399. LODGES. The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. Except as provided by Title 8, Business Organizations Code, this article and Articles 1400-1407, Revised Statutes, do not apply to a grand body to which the Business Organizations Code applies.

SECTION 14. CONFORMING AMENDMENT. Chapter 963, Acts of the 70th Legislature, Regular Session, 1987 (Article 1407a, Vernon's Texas Civil Statutes), is amended by adding Section 9 to read as follows:

Sec. 9. APPLICABILITY. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a church benefits board to which the Business Organizations Code applies.

SECTION 15. CONFORMING AMENDMENT. Chapter 853, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1528g, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. APPLICABILITY. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a business development corporation to which the Business Organizations Code applies.

SECTION 16. REPEALER. (a) The following Acts and articles as compiled in Vernon's Texas Civil Statutes are repealed: Articles 1525, 1526, 1527, 1527a, 1528, 1528a, and 1528h.

(b) The following Acts and articles as compiled in Vernon's

Texas Civil Statutes are repealed on January 1, 2010: Articles 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1407a, and 1528g.

SECTION 17. EFFECTIVE DATE. This Act takes effect January 1, 2006.