

(805 ILCS 180/Art. 37 heading)
Article 37. Conversions, mergers, and series
(Source: P.A. 97-839, eff. 7-20-12.)

(805 ILCS 180/37-5)

Sec. 37-5. Definitions. In this Article:

"Corporation" means (i) a corporation under the Business Corporation Act of 1983, a predecessor law, or comparable law of another jurisdiction or (ii) a bank or savings bank.

"General partner" means a partner in a partnership and a general partner in a limited partnership.

"Limited partner" means a limited partner in a limited partnership.

"Limited partnership" means a limited partnership created under the Uniform Limited Partnership Act (2001), a predecessor law, or comparable law of another jurisdiction.

"Partner" includes a general partner and a limited partner.

"Partnership" means a general partnership under the Uniform Partnership Act (1997), a predecessor law, or comparable law of another jurisdiction.

"Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

"Shareholder" means a shareholder in a corporation.

(Source: P.A. 96-328, eff. 8-11-09.)

(805 ILCS 180/37-10)

Sec. 37-10. Conversion of partnership or limited partnership to limited liability company.

(a) A partnership or limited partnership may be converted to a limited liability company pursuant to this Section if conversion to a limited liability company is permitted under the law governing the partnership or limited partnership.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

(d) After a conversion is approved under subsection (b) of this Section, the partnership or limited partnership shall file articles of organization in the office of the Secretary of State that satisfy the requirements of Section 5-5 and contain all of the following:

(1) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be.

(2) Its former name.

(3) A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (b) of this Section.

(4) In the case of a limited partnership, a statement that the certificate of limited partnership shall be canceled as of the date the conversion took effect.

(e) In the case of a limited partnership, the filing of articles of organization under subsection (d) of this Section cancels its certificate of limited partnership as of the date the conversion took effect.

(f) A conversion takes effect when the articles of organization are filed in the office of the Secretary of State or on a date specified in the articles of organization not later than 30 days subsequent to the filing of the articles of organization.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

(h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/37-15)

Sec. 37-15. Effect of conversion; entity unchanged.

(a) A partnership or limited partnership that has been converted under this Article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(2) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(5) except as otherwise provided in the agreement of conversion under Section 37-10, all of the partners of the converting partnership continue as members of the limited liability company.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/37-20)

Sec. 37-20. Merger of entities.

(a) Pursuant to a plan of merger approved under subsection (c) of this Section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities if merger with or into a limited liability company is permitted under the law governing the domestic or foreign entity.

(b) A plan of merger must set forth all of the following:

(1) The name of each entity that is a party to the merger.

(2) The name of the surviving entity into which the other entities will merge.

(3) The type of organization of the surviving entity.

(4) The terms and conditions of the merger.

(5) The manner and basis for converting the interests, shares, obligations, or other securities of each party to the merger into interests, shares, obligations, or other securities of the surviving entity, or into money or other property in whole or in part.

(6) The street address of the surviving entity's principal place of business.

(c) A plan of merger must be approved:

(1) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Section 37-5(b); and

(4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this State or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger is effective upon the filing of the articles of merger with the Secretary of State, or a later date as specified in the articles of merger not later than 30 days subsequent to the filing of the plan of merger under Section 37-25.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/37-25)

Sec. 37-25. Articles of merger.

(a) After approval of the plan of merger under Section 37-20, unless the merger is abandoned under subsection (d) of Section 37-20, articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Secretary of State for filing. The articles must set forth all of the following:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger.

(2) For each limited liability company that is to merge, the date its articles of organization were filed with the Secretary of State.

(3) That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge and, if a corporation is a party to the merger, a copy of the plan as approved by the corporation shall be attached to the articles.

(4) The name and address of the surviving limited liability company or other surviving entity.

(5) The effective date of the merger.

(6) If a limited liability company is the surviving entity, any changes in its articles of organization that are necessary by reason of the merger.

(7) If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Secretary of State or, if an application has not been filed, a statement to that effect.

(8) If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this State and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this State which is to merge, and for the enforcement, as provided in this Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

(b) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this State until an application for that authority is filed with the Secretary of State.

(c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

(d) To the extent the articles of merger are inconsistent with the limited liability company's articles of organization, the articles of merger shall operate as an amendment to the company's articles of organization.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/37-30)

Sec. 37-30. Effect of merger.

(a) When a merger takes effect:

(1) the separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities, and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(5) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that is a party to a merger vest in the surviving entity.

(b) The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office. Service is effected under this subsection (b) at the earliest of:

(1) the date the company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) Service under subsection (b) of this Section shall be made by the person instituting the action by doing all of the following:

(1) Serving on the Secretary of State, or on any employee having responsibility for administering this Act, a copy of the process, notice, or demand, together with any papers required by law to be delivered in connection with service and paying the fee prescribed by Article 50 of this Act.

(2) Transmitting notice of the service on the Secretary of State and a copy of the process, notice, or demand and accompanying papers to the surviving entity being served, by registered or certified mail at the address set forth in the articles of merger.

(3) Attaching an affidavit of compliance with this Section, in substantially the form that the Secretary of

State may by rule prescribe, to the process, notice, or demand.

(d) Nothing contained in this Section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

(e) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(f) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this Act or pay its liabilities and distribute its assets under this Act.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/37-35)

Sec. 37-35. Article not exclusive. This Article does not preclude an entity from being converted or merged under other law. A bank or savings bank that converts to or merges with and into a limited liability company shall be subject to the provisions of this Article or to other applicable law to the extent that those provisions do not conflict with the State or federal law pursuant to which the conversion or merger of the bank or savings bank is authorized.

(Source: P.A. 93-561, eff. 1-1-04.)

(805 ILCS 180/37-40)

Sec. 37-40. Series of members, managers or limited liability company interests.

(a) An operating agreement may establish or provide for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this Section or under other applicable law, in the event that an operating agreement creates one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held (directly or indirectly, including through a nominee or otherwise) and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this Section, then the

debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that the articles of organization contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the Office of the Secretary of State shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this Act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this Section except to the extent that the series have specifically accepted joint liability by contract.

(c) Except in the case of a foreign limited liability company that has adopted an assumed name pursuant to Section 45-15, the name of the series with limited liability must commence with the entire name of the limited liability company, as set forth in its articles of incorporation, and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted an assumed name pursuant to Section 45-15, the name of the series with limited liability must commence with the entire name, as set forth in the foreign limited liability company's assumed name application, under which the foreign limited liability company has been admitted to transact business in this State.

(d) Upon the filing of the certificate of designation with the Secretary of State setting forth the name of each series with limited liability, the series' existence shall begin, and each of the duplicate copies stamped "Filed" and marked with the filing date shall be conclusive evidence, except as against the State, that all conditions precedent required to be performed have been complied with and that the series has been or shall be legally organized and formed under this Act. If different from the limited liability company, the certificate of designation for each series shall list the names of the members if the series is member managed or the names of the managers if the series is manager managed. The name of a series with limited liability under subsection (b) of this Section may be changed by filing with the Secretary of State a certificate of designation identifying the series

whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member managed series or of the managers of a manager managed series may be changed by filing a new certificate of designation with the Secretary of State. A series with limited liability under subsection (b) of this Section may be dissolved by filing with the Secretary of State a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company as provided in subsection (m) of this Section. Certificates of designation may be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

(e) A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.

(f) The registered agent and registered office for the limited liability company in Illinois shall serve as the agent and office for service of process in Illinois for each series.

(g) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(h) A series may be managed by either the member or members associated with the series or by a manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(i) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(j) Except to the extent modified in this Section, the provisions of this Act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.

(k) Except as otherwise provided in an operating agreement, any event under this Act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(l) Except as otherwise provided in an operating agreement, any event under this Act or an operating agreement that causes a member to cease to be associated with a series

shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(m) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection (b) of this Section shall not affect the limitation on liabilities of such series provided by subsection (b) of this Section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Article 35 of this Act.

(n) If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and certain of its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(o) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers or duties and has limited the liabilities of such series so that the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on their own behalf may register to do business in the State in accordance with Section 45-5 of this Act. The limitation of liability shall be so stated on the application for admission as a foreign limited liability company and a certificate of designation shall be filed for each series being registered to do business in the State by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

(Source: P.A. 98-720, eff. 7-16-14.)

(805 ILCS 180/Art. 40 heading)
Article 40. Derivative Actions

(805 ILCS 180/40-1)

Sec. 40-1. Right of action. No action shall be brought by a member, or transferee who is entitled to exercise the rights of a member to bring an action, in the right of a limited liability company to recover a judgment in its favor unless members or managers with authority to do so have refused to bring the action or unless an effort to cause those members or managers to bring the action is not likely to succeed.
(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/40-5)

Sec. 40-5. Proper plaintiff. No action shall be brought in the right of a limited liability company by a member or transferee who is a substituted member, unless (i) the plaintiff was a member or is a transferee who was a substituted member at the time of the transaction of which the person complains or (ii) the person's status as a member or a transferee who is a substituted member had devolved upon him or her by operation of law or under the terms of the operating agreement from a person who was a member or a transferee who was a substituted member at the time of the transaction.
(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/40-10)

Sec. 40-10. Pleading. In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the limited liability company or the reasons for not making the effort.
(Source: P.A. 87-1062.)

(805 ILCS 180/40-15)

Sec. 40-15. Expenses. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by the plaintiff.
(Source: P.A. 87-1062.)