

950 CMR 112.00: LIMITED LIABILITY COMPANIES

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112.01: Purpose

(1) 950 CMR 112.00 describes the practices and procedures of the Corporations Division in the Office of the Secretary of the Commonwealth relative to M.G.L. c. 156C, limited liability companies.

(2) The Corporations Division, which is under the supervision of the Secretary of the Commonwealth administers the provisions of Massachusetts General Laws pertaining to limited liability companies. The chief executive officer of the Corporations Division has the title, "Director of the Corporations Division". The Director may, subject to the approval of the Secretary, make, amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and are necessary to carry out their purposes. The Director is empowered to hear, examine and investigate matters subject to the provisions of the Massachusetts General Laws.

(3) From time to time, the Director may authorize any exceptions to 950 CMR 112.00 with respect to any specific requirement provided that such exceptions to 950 CMR 112.00 are in conformity with the provisions of the Massachusetts General Laws.

112.02: Definitions

For the purposes of 950 CMR 112.00, the following words and abbreviations shall, unless the context otherwise indicates, have the following meanings:

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Authorized Person means a manager or any person designated in the certificate of organization, any amendments thereto, or the most recent annual report as authorized to execute documents to be filed with the Division. If the LLC has not been formed, authorized person means the person forming the LLC, or, if the LLC is in the hands of a receiver, trustee or other court-appointed fiduciary, such receiver, trustee or fiduciary.

Foreign Entity means an entity formed under a law other than the laws of the Commonwealth, including without limitation, any state, country or jurisdiction. For purposes of 950 CMR 112.00, the term foreign entity includes limited partnerships, limited liability companies, business trusts and corporations, including business, professional and non-profit corporations.

Foreign Limited Liability Company means a limited liability company formed under a law other than that of the Commonwealth, including without limitation, any state, country or jurisdiction, and denominated as such under the laws of such state, foreign country or other foreign jurisdiction.

Limited Liability Company and Domestic Limited Liability Company means an unincorporated organization having one more members and formed pursuant to M.G.L. c. 156C.

Manager means a person designated in the operating agreement or otherwise of a manager-managed limited liability company that is responsible alone or in concert with other managers for the management and conduct of the activities of the company.

Other Business Entity means a corporation to which M.G.L. c. 156D, Part 17, § 17.01 applies, a professional corporation and a foreign professional corporation each as defined in M.G.L. c. 156A, § 2, a foreign corporation as defined in M.G.L. c. 156B, § 1.40, an association or a trust as defined in M.G.L. c. 182, § 1 that has filed a copy of its declaration of trust with the Division, a partnership whether general or limited and whether domestic or foreign, as defined respectively in M.G.L. c. 108A, § 6 and M.G.L. c. 109, § 1 and a foreign limited liability company as defined in 950 CMR 112.02.

Person means a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

Personal Information means any information concerning an individual not required by law or regulation to be included in a document. Examples of such information include social security number, driver's license number and date of birth. It may include residential address if such is not required by law.

Professional Service means the service performed by registered physicians and surgeons, chiropractors, podiatrists, engineers, electrologists, physical therapists, psychologists, certified public accountants, dentists, veterinarians, optometrists, acupuncturists and registered nurses, so long as the foregoing are licensed under the provisions of M.G.L. c. 112; and by attorneys at law admitted to practice in the courts of the commonwealth under M.G.L. c. 111; and any other type of service which may be rendered only pursuant to a license under the laws of the commonwealth.

Records means the records required to be maintained by a limited liability company pursuant to M.G.L. c. 156C, § 9.

Singular and Plural Forms – singular nouns shall include plural nouns and plural nouns shall include the singular unless the context otherwise requires.

112.03: Place to File

Documents shall be mailed or delivered to the Division at: Secretary of the Commonwealth, Corporations Division, Limited Liability Company Section, One Ashburton Place, 17th Floor, Boston, MA 02108-1512

If the document is mailed, the envelope shall clearly identify the type of document enclosed.

Documents submitted to any other area of the office or to any district office will not be considered received until received by the Division at the address noted above.

112.04: On-line Services

(1) The Division also offers online services at the Division's website. Services offered online include filing documents, ordering certificates and certified copies and searching Division records.

(2) General inquiries to the Division may also be made by electronic mail to corpinfo@sec.state.ma.us. Electronic mail cannot be used to file limited liability company documents, request certificates, certified copies or searches of the records.

112.05: Division Hours

(1) The regular business hours of the filing and certificate rooms are Monday through Friday from 8:45 A.M. to 4:00 P.M., excluding holidays. The regular business hours of the public search room and phone room are Monday through Friday from 8:45 A.M. to 5:00 P.M., excluding holidays.

(2) Authorized facsimile and electronic transmissions may be made 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service.

112.06: General Filing Requirements

(1) A document shall be submitted in the English language except that an LLC name need not be in English if written in English letters or Arabic or Roman numerals.

(2) A document shall be typed or printed. It may not be handwritten.

(3) A document shall contain all of the information required by M.G.L. c. 156C and 950 CMR 112.00. It may also contain other information relevant to the business affairs of the LLC, except that the Division, in its discretion, may reject or redact a document containing any personal information.

(4) The execution of a certificate by an authorized person constitutes an affirmation, under penalties of perjury, that the facts stated therein are true.

(5) Each certificate required to be filed with the Division pursuant to M.G.L. c. 156C shall be originally signed by:

- (a) the person forming the limited liability company, if the limited liability company has not been formed;
- (b) any manager, if the limited liability company has managers, or by any other person authorized to file documents with the Division as set forth in the certificate of organization, any amendment thereto or the most recent annual report; or
- (c) a receiver, trustee, or other court appointed fiduciary.

(6) Unless otherwise provided in the operating agreement any person may sign a certificate as an agent, including an attorney-in-fact. The certificate must specify if a person is signing as an agent, and the name of the agent.

(7) (a) A foreign entity that is a manager of a domestic limited liability company or of a foreign limited liability company doing business in the Commonwealth, must register to do business with the Corporations Division by filing an Application for Registration pursuant to M.G.L. c.109, § 49, M.G.L. c. 156C, § 48, M.G.L. c. 156D, § 15.03 and M.G.L. c. 182.

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- (b) Notwithstanding the foregoing, a foreign entity is not required to register if:
 - 1. it is the manager of a domestic limited liability company that is organized to do business wholly outside of Massachusetts and
 - a. the certificate of organization for the domestic limited liability company includes a provision in the certificate stating that fact and
 - b. the date of formation and legal existence of the manager is verifiable on a public website without charge or the limited liability company provides a certificate from the home jurisdiction of the manager reflecting said information; or
 - 2. it is a manager of a foreign entity that has registered to manage another entity and the management of that entity is the sole activity of the foreign entity in the Commonwealth.

112.07: Forms

The Division may supply forms for documents required to be filed with the Division. The use of official forms is optional. Copies of the forms are available on the Division's website. Any document submitted to the Division not on an official form must be on standard size paper, 8½ by 11 inches and follow the format specifications contained in 950 CMR 112.00. The minimum font size is ten. A document which does not comply with size requirements, format specifications or font size will be rejected.

112.08: Filing of Certificates

Documents submitted to the Division need not be accompanied by a photo copy or duplicate original. If a photocopy or duplicate original is submitted, the Division will return the filed duplicate original or photocopy by mail to the filer only if the filer has provided a self-addressed postage pre-paid return envelope.

If the Secretary finds that the document submitted to him complies with law, he shall endorse on the document the word "filed" and the day, month, year and time of filing. A copy of all filed documents may be obtained from the Division's website.

112.09: Document Delivery

A document may be tendered for filing by:

- (1) personal or courier delivery to the Division at One Ashburton Place, Room 1717, Boston, MA during regular business hours;
- (2) postal service delivery addressed One Ashburton Place, Room 1717, Boston, MA 02108;
- (3) facsimile delivery in a manner authorized by the Division on its website; or
- (4) electronic transmission in the manner authorized by the Division on its website.

112.10: Effective Time and Date

Documents are effective on the date approved by the Division, unless M.G.L. c. 156C authorizes and the document specifies a later effective date, which shall be a date certain.

112.11: Domestic Limited Liability Company Certificate

- (1) In order to form a domestic limited liability company, one or more persons must execute a certificate of organization. The certificate shall set forth in the order provided in 950 CMR 112.11(a) through (j):
 - (a) the federal employer identification number, if available;
 - (b) the name of the limited liability company;
 - (c) the street address of the office in the Commonwealth at which its records will be maintained;

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- (d) the general character of its business, and if the limited liability company is organized to render a professional service, the service to be rendered, the name and address of each member or manager who will render a service in the Commonwealth, and a statement that the limited liability company will abide by and be subject to any conditions or limitations established by any applicable regulating board, including the provisions of liability insurance required by M.G.L. c. 156C, § 65. If the limited liability company is to render a professional service, the certificate of organization shall be accompanied by a certificate of any applicable regulating board that each member or manager who will render a professional service in the Commonwealth is duly licensed;
- (e) the latest date of dissolution, if specified;
- (f) the name and street address of the resident agent for service of process in the Commonwealth required to be maintained by M.G.L. c. 156C, § 5 and the agent's written consent to the appointment either on the certificate or attached thereto.
- (g) the name of each manager and, if different from the office location, their business address. If there are no managers, include a statement to that effect; and
- (h) the name of each person in addition to the manager who is authorized to execute documents to be filed with the Division, and their business address if different from the office location. At least one person shall be named if there are no managers.

The registration may, in addition, include:

- (i) the name of each person authorized to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property and their business address if different from the office location; and
- (j) any other matters the authorized persons determine to include therein.

The fee for filing the certificate of registration shall be \$500.00.

- (2) A limited liability company is formed at the time of filing of the certificate of organization with the Division or at any later time specified in the certificate of organization if, in either case, there has been substantial compliance with the requirements of M.G.L. c. 156C, § 12.

112.12: Limited Liability Company Name

- (1) the name of the limited liability company:
 - (a) shall contain the words "limited liability company", "limited company", or the abbreviation "L.L.C.", "L.C.", "LLC" or "LC";
 - (b) may contain the name of a member or manager; and
 - (c) may not be the same as, or deceptively similar to the name of any corporation, limited partnership, or limited liability company reserved or organized under the laws of the Commonwealth or registered as a foreign corporation, foreign limited partnership, or foreign limited liability company in the commonwealth, business trust or trademark/service mark filed with the Division, except with the written consent of the corporation, limited partnership, limited liability company, business trust or owner of the mark previously filed with the Division.

- (2) Any person intending to organize a limited liability company, any domestic limited liability company or foreign limited liability company registered in the Commonwealth or any foreign limited liability company intending to register in the Commonwealth may reserve the exclusive right to use a name, if available under the laws of the Commonwealth. The reservation shall be made by filing an application with the Division specifying the name to be reserved and the name and address of the applicant. The application must be accompanied by a \$30.00 filing fee. The name shall be reserved for a period of 60 days.

The reservation may be extended for an additional 60 day period upon written request of the applicant and payment of an additional \$30.00 fee.

The right to the exclusive use of a reserved name may be transferred to any other person by filing a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name and address of the transferee and accompanied by a fee of \$30.00.

112.13: Resident Agent

(1) Each domestic and foreign limited liability company authorized to transact business in the Commonwealth must continuously maintain a resident agent and office in the Commonwealth.

(2) The office address of the resident agent must be a street address. A post office address is not sufficient.

(3) The registered agent may be an individual, a domestic corporation, a domestic not for profit corporation, a domestic other business entity authorized by law, a foreign corporation qualified to do business in the Commonwealth or a foreign other business entity authorized by law and qualified to do business in the Commonwealth.

(4) A domestic limited liability company or a foreign limited liability company authorized to transact business in the Commonwealth shall change its resident agent or the street address of the resident agent by filing a certificate of change of agent/office address. Such certificate shall set forth:

- (a) the exact name of the limited liability company;
- (b) the current street address of the resident agent;
- (c) the new street address of the resident agent;
- (d) the name of the current resident agent;
- (e) the name of the new resident agent if the current resident is to be changed; and
- (f) the new resident agent's written consent to the appointment if the certificate sets forth the name of a new resident agent.

(5) A resident agent shall change the street address of his office of any domestic limited liability company or foreign limited liability company authorized to transact business in the Commonwealth for which he is a resident agent by filing a statement of change of resident office. The statement of change shall set forth:

- (a) the name of the agent;
- (b) the exact name of each domestic or foreign limited liability company;
- (c) the current office address;
- (d) the new office address; and
- (e) a certification that each limited liability company listed therein has been notified in writing of the change as required by M.G.L. c. 156C, §§ 5A and 51.

The Statement of Change must be signed by the resident agent. It is effective on the time and date approved by the Division.

(6) A resident agent shall resign his appointment filing a statement of resignation with the Division. The statement of resignation shall set forth:

- (a) the name of the resident agent;
- (b) the exact name of the limited liability company;
- (c) the current office address of the resident agent;
- (d) a statement that the agent resigns his appointment as resident agent of the limited liability company;
- (e) a statement indicating whether the resident agent office address will be discontinued; and
- (f) a statement that a copy of the resignation has been furnished to the limited liability company.

The statement of resignation must be signed by the registered agent. The signature may be original or facsimile. The resignation, and if applicable, the discontinuance of the office address, shall be effective on the 31st day after the date on which the statement was filed.

112.14: Limited Liability Company Annual Report

Each limited liability company shall file an annual report with the Division on or before the anniversary date of the filing of its original certificate of organization. The report shall be titled "Annual Report", specify the year, contain, in the order provided in 950 CMR 112.11, all information required to be included in the certificate, and any other matters the authorized person(s) determine to include therein. The annual report may amend any information in the certificate, except that any change pertaining to registered agent or office must be made as provided in 950 CMR 112.13. The report shall specifically identify each amendment. The annual report shall be accompanied by a fee of \$500.00.

112.15: Certificate of Amendment

(1) A certificate of organization may be amended by filing a certificate of amendment with the Division. An amendment to the certificate must be made to reflect:

- (a) the designation of managers of a limited liability company which theretofore did not have managers;
- (b) any change in the managers of a limited liability company or authorized signatories; and
- (c) any change to any other information required to be included in the original certificate, except that any change pertaining to the resident agent or resident agent office, shall be made as provided in 950 CMR 112.13.

A manager, or, if there is no manager, then any member, who becomes aware that any statement in a certificate of organization was false when made, or that any matter described in the certificate of organization has changed, making the certificate false in any material respect, shall promptly amend the certificate to correct such matter.

A certificate of organization may be amended at any other time for any other purpose.

(2) The certificate of amendment shall set forth in the order provided in 950 CMR 112.15(2)(a) through (g):

- (a) the federal employer identification number;
- (b) the name of the limited liability company;
- (c) the date of filing of the original certificate;
- (d) the name of each manager and the business address if different from its office address. If there are no managers, include a statement to that effect;
- (e) the name of each person authorized to execute documents to be filed with the Division and business address if different from the office address. At least one person shall be named if there are no managers;
- (f) the name of each person authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property whether to be filed with the registry of deeds or a district office of the land court, if any, and the business address if different from the office address; and
- (g) the amendment to the certificate.

(3) The certificate of amendment shall be accompanied by payment of a \$100.00 fee.

112.16: Restated Certificate

(1) A limited liability company may at any time integrate into a single instrument all of the provisions of its certificate of organization which are then in effect and operative and may at the same time amend its certificate of organization. If the restated certificate merely restates and integrates the existing provisions of the certificate of organization it shall be designated as a "restated certificate of organization". If in addition, the restatement amends some or all of the information as provided in 950 CMR 112.15, it shall be designated as an "amended and restated certificate of organization".

(2) The certificate of organization for a limited liability company may be restated by filing a restated certificate with the Division. The restated certificate shall be designated in the manner provided above and shall set forth:

- (a) its federal identification number;

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- (b) the name of the limited liability company, and if such name has been changed, the name under which it was originally filed;
 - (c) the date of filing of the original certificate of organization;
 - (d) all information required to be set forth in the original certificate of organization in the order provided in 950 CMR 112.11;
 - (e) a clear indication of any amendments to be effected by the restated certificate, and if none, a statement to that effect; and
 - (f) that it was duly executed and is being filed in accordance with M.G.L. c. 156C, § 19.
- (3) The fee for filing the restated certificate shall be \$100.00.
- (4) Upon filing or upon the future effective date, the restated certificate shall supersede the initial certificate of organization as theretofore amended or supplemented, and shall be the certificate of organization.

112.17: Certificate of Merger or Consolidation

- (1) A limited liability company may merge or consolidate with or into one or more limited liability companies or other business entities formed or organized under the laws of the Commonwealth or any other state of the United States, or any foreign country or other foreign jurisdiction, with such limited liability company or other business entity being the resulting or surviving limited liability company or other business entity.
- (2) A limited liability company which is involved in a consolidation or merger shall file a certificate of consolidation or merger with the Division as provided in 950 CMR 112.17. If the limited liability company is involved in a consolidation or merger with a domestic other business entity which is required to make a filing with the Division in order to effectuate the merger or consolidation, the surviving entity involved in the merger or consolidation may submit a combined filing which contains the information and is accompanied by the fee required by law for each domestic entity involved. The filing shall be designated and formatted in the manner established by law and regulation for the surviving entity. The certificate shall set forth:
- (a) the name, federal identification number, date and jurisdiction of formation or organization, and office location of each limited liability company or other business entity involved in the merger or consolidation;
 - (b) the name of the resulting or surviving domestic limited liability company or other business entity;
 - (c) a statement that the merger or consolidation has been duly adopted in accordance with the law under which it is organized or formed and, if applicable, in accordance with the provisions of the operating agreement;
 - (d) if the consolidation or merger is to be effective at a later date, the effective date of the merger or consolidation;
 - (e) a statement that the agreement of consolidation or merger will be kept on file at the office of the resulting or surviving limited liability company or other business entity, and the street address of that office;
 - (f) a statement that a copy of the agreement of consolidation or merger will be furnished by the resulting or surviving limited liability company or other business entity on request and without cost to any member of the limited liability company or to any person holding an interest in any other business entity;
 - (g) if the resulting or surviving limited liability company or other business entity is not an entity organized under the laws of the Commonwealth, a statement that such resulting or surviving entity agrees that, if such entity does not continually maintain an agent for service of process in the Commonwealth, to appoint irrevocably the Secretary of the Commonwealth to be its true and lawful attorney upon whom all lawful process in any action or proceeding in the Commonwealth may be served in the manner set forth in M.G.L. c. 156D, Part 15, § 15.10;
 - (h) if the resulting or surviving entity is a limited liability company governed by 950 CMR 112.00, the certificate of merger/consolidation shall include:

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1. the name of each manager and business address, if different from the office location. If there are no managers, include a statement to that effect;
2. the name of each person authorized to execute documents to be filed with the Division and business address, if different from the office location. At least one person shall be named if there are no managers;
3. the name of each person authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property and business address, if different from the office location; and
4. any amendment to the certificate of organization of the surviving limited liability company to be effected pursuant to the agreement of merger, or in the case of a resulting limited liability company, all other information required to be included in the certificate of organization pursuant to 950 CMR 112.11.

(3) The fee for filing the consolidation or merger shall be \$100.00 plus the fee assessed by law for each domestic other business entity.

(4) In order to file a certificate of consolidation or merger, each non-surviving limited liability company involved shall file all annual reports and pay all fees required by law to be filed and paid for the most recent ten years.

112.18: Certificate of Conversion

(1) Any other business entity may convert to a domestic limited liability company by filing a certificate of conversion with the Division. If a domestic other business entity is required to make a filing with the Division in order to effectuate the conversion, the surviving limited liability company may submit a combined filing which contains the information and is accompanied by the fee required by law for each domestic entity involved.

(2) The certificate of conversion shall set forth:

- (a) the name, federal identification number, date and jurisdiction of formation or organization of the other business entity immediately prior to its conversion to a domestic limited liability company;
- (b) the name of the limited liability company as set forth in the certificate of organization attached to the certificate of conversion;
- (c) the future effective date, which shall be a date certain, of the conversion if it is not to be effective upon filing of the certificate of conversion;
- (d) The certificate of conversion shall be accompanied by a certificate of organization for the limited liability company. The certificate of organization must comply with 950 CMR 112.11.

(3) The fee for filing the certificate of conversion shall be \$100 plus the fee assessed by law for each domestic other entity. The fee for filing the certificate of organization is \$500.

112.19: Certificate of Cancellation

(1) A certificate of organization of a limited liability company shall be canceled upon the dissolution and completion of the winding up of a limited liability company, or at any time there are no members. A certificate of cancellation shall be filed with the Division and shall set forth:

- (a) its federal employer identification number;
- (b) the name of the limited liability company;
- (c) the date of filing of the original certificate of organization;
- (d) the reason for filing the certificate of cancellation;
- (e) if the certificate of cancellation is to be effective at a later date, the effective date;
- (f) any other information the person filing the certificate determines to include therein.

(2) The fee for filing a certificate of cancellation shall be \$100.00.

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- (3) In order to file a certificate of cancellation, the limited liability company shall file all annual reports and pay all fees required by law to be filed and paid.

112.20: Administrative Dissolution of a Limited Liability Company

- (1) If a limited liability company has failed for two consecutive years to comply with the provisions of law requiring the filing of annual reports or if the Director is satisfied that the limited liability company has become inactive and its dissolution would be in the public interest, the Division may commence a proceeding to dissolve the limited liability company pursuant to M.G.L. c. 156C § 70.
- (2) A limited liability company may be considered inactive and its dissolution in the public interest, if the limited liability company fails to appoint a resident agent within 60 days after notice from the Division to the limited liability company of the requirement to maintain a resident agent and office in the commonwealth.
- (3) The Division shall give written notice to the limited liability company that one or more grounds exist for administrative dissolution. The notice shall be sent by mail postage prepaid to the office required to be maintained by M.G.L. c. 156C, § 5(1). If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Division that each ground does not exist within 90 days after the date of the notice, the Division shall administratively dissolve the limited liability company.

112.21: Reinstatement Following Administrative Dissolution

- (1) A limited liability company that has been administratively dissolved by the Division may apply for reinstatement at any time.
- (2) The application for reinstatement consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for reinstatement shall set forth:
 - (a) the exact name of the limited liability company;
 - (b) the street address of the resident agent's office and the name of the resident agent;
 - (c) the effective date of the limited liability company's administrative dissolution;
 - (d) a statement that the grounds for administrative dissolution did not exist or have been eliminated; and
 - (e) a statement that the name of the limited liability company satisfies the requirements of M.G.L. c. 156C, § 3 or the limited liability company shall simultaneously submit a certificate of amendment to change its name to a name that satisfies the requirements.The reinstatement shall be effective at the time and on the date approved by the Division.

112.22: Registration of Foreign Limited Liability Companies

- (1) A foreign limited liability company doing business in the Commonwealth shall submit to the Division within ten days after it commences doing business in the commonwealth, an application for registration as a foreign limited liability company. The application shall be accompanied by a certificate of legal existence or a certificate of good standing of the foreign limited liability company, issued not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction where the foreign limited liability company is organized. If the certificate or such evidence is in a foreign language, a translation thereof, under oath of the translator, shall be attached.

The application shall set forth in the order provided in 950 CMR 112.22(1)(a) through (k) the following:

 - (a) the federal employer identification number;
 - (b) the name of the foreign limited liability company and, if different, the name under which it proposes to do business in the Commonwealth;
 - (c) the jurisdiction where such limited liability company was organized and the date of its organization;

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(d) the general character of the business the foreign limited liability company proposes to do in the Commonwealth, and if the foreign limited liability company is to render professional service(s) in the Commonwealth, each service to be rendered, the name and address of each member or manager who will render a service in the Commonwealth, and a statement that the limited liability company will abide by and be subject to any conditions or limitations established by any applicable regulating board, including the provisions of liability insurance. If the limited liability company is to render professional service(s), the certificate of organization shall be accompanied by a certificate of each applicable regulating board indicating that each member or manager who will render a professional service in the commonwealth is duly licensed to do so.;

(e) the business address of its principal office;

(f) the name of each manager, if any, and business address, if different from the principal office location. If there are no managers, include a statement to that effect;

(g) the business address of its principal office in the Commonwealth, if any;

(h) the name and street address of the agent for service of process in the Commonwealth, and the agent's written consent to the appointment either on the certificate or attached thereto;

(i) if the foreign limited liability company has a specific date of dissolution, the latest date on which the limited liability company is to dissolve; and

(k) if desired, the name of one or more persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property, whether to be recorded in the registry of deeds or a district office of the land court and their business address, if different from principal office location.

(2) If the foreign limited liability company's certificate of organization from its jurisdiction of organization sets forth any part of the information required to be set forth in the application for registration, the foreign limited liability company may submit a certified copy of such certificate, with a sworn translation, if necessary, in *lieu* of such part of the application for registration.

(3) The fee for filing the application of registration shall be \$500.00.

112.23: Foreign Limited Liability Companies: Amendment to Registration

(1) If any statement in the application for registration of a foreign limited liability company was false when made or any arrangement or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the Division a certificate signed and sworn to by an authorized person correcting or amending such statement.

(2) The application for registration shall be amended by filing an amended registration certificate. An amendment to the registration certificate must be made to reflect:

(a) the designation of managers of a foreign limited liability company which theretofore did not have managers;

(b) any change in the managers or authorized signatories; and

(c) any change to any other information required to be included in the original registration certificate, except that any change to the registered agent or registered office, shall be made as provided in 950 CMR 112.13.

(3) The amended registration certificate shall set forth in the order provided in 950 CMR 112.23(3)(a) through (h).

(a) the federal employer identification number;

(b) the name of the foreign limited liability company, and if different, the name under which it proposes to do business in the commonwealth;

(c) the jurisdiction where the foreign limited liability company was organized and the date of its organization;

(d) the date it registered to do business in the Commonwealth;

(e) the name of each manager and the business address, if different from its principal office location. If there are no managers, include a statement to that effect.

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- (f) the name of each person authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property whether to be filed with the registry of deeds or a district office of the land court, if any, and the business address, if different from its principal office location;
- (g) the amendment to the registration certificate; and
- (h) if the amendment includes a change of the limited liability company's name, or the state or country of its formation, the amended registration certificate will be accompanied by an original certificate evidencing the changes issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of formation. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

(4) The fee for filing an amendment to registration shall be \$100.00.

112.24: Revocation of Authority to Transact Business in the Commonwealth

- (1) If a foreign limited liability company has failed for two consecutive years to comply with the provisions of law requiring the filing of annual reports or if the Director is satisfied that the revocation of the foreign limited liability company's authority to transact business in the Commonwealth would be in the public interest, the Division may commence a proceeding to revoke the authority of the foreign limited liability company to transact business in the Commonwealth.
- (2) The revocation of authority of a foreign limited liability company shall be deemed to be in the public interest, if the foreign limited liability company fails to appoint a resident agent within 60 days after notice from the Division to the foreign limited liability company of the requirement to maintain a resident agent and office in the commonwealth.
- (3) The Division shall give written notice to the foreign limited liability company that one or more grounds exist for administrative revocation of its authority to transact business in the Commonwealth. The notice shall be sent by mail postage prepaid to the address of the foreign limited liability company in the Division records. If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Division that each ground does not exist within 90 days after the date of the notice, the Division shall administratively revoke the authority of the foreign limited liability company to transact business in the Commonwealth.

112.25: Reinstatement of Authority to Transact Business

- (1) A foreign limited liability company whose authority to transact business in the Commonwealth was revoked may apply to the Division for reinstatement at any time.
- (2) The application for reinstatement consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for reinstatement shall set forth:
 - (a) the exact name of the foreign limited liability company;
 - (b) the street address of the resident agent's office and the name of the resident agent;
 - (c) the effective date of the foreign limited liability company's administrative revocation;
 - (d) that the grounds for administrative revocation did not exist or have been eliminated; and
 - (e) that the name of the foreign limited liability company satisfies the requirements of M.G.L. c. 156C, § 3 or the foreign limited liability company will simultaneously submit a certificate of amendment to change its name to a name that satisfies the requirements.
 - (f) The application for reinstatement shall be accompanied by an original certificate of legal existence or a certificate of good standing issued not more than 90 days prior to such submission by an officer of agency properly authorized in the jurisdiction of the organization. If the certificate is in a foreign language, a translation under oath of the translator shall be attached.

The reinstatement shall be effective at the time and on the date approved by the Division.

112.26: Foreign Limited Liability Company: Cancellation or Withdrawal

(1) The registration of a foreign limited liability company doing business in the Commonwealth shall be canceled in the same manner and at such times as are provided in M.G.L. c. 156C, §§ 14 and 53 and 950 CMR 112.19, except that the certificate of cancellation shall set forth either that all taxes and fees owed the Commonwealth have been paid or provided for. In order to file a certificate of cancellation, the foreign limited liability company must have filed all annual reports and paid all fees required by law.

(2) A foreign limited liability company doing business in the Commonwealth may withdraw from the Commonwealth by submitting to the Division a certificate of withdrawal signed and sworn to by an authorized person stating:

- (a) its federal identification number;
- (b) the name of the foreign limited liability company, and if different, the name under which it is registered and doing business in the Commonwealth;
- (c) the business address of its principal office;
- (d) the business address of its principal office in the Commonwealth, if any;
- (e) the name and business address of its resident agent;
- (f) that the foreign limited liability company is not doing business in the Commonwealth; and
- (g) that all taxes have been paid or provided for.

In order to file a certificate of withdrawal, the foreign limited liability company must have filed all annual reports and paid all fees required by law.

112.27: Foreign Limited Liability Company: Annual Report

Every foreign limited liability company shall file an annual report with the Division on or before the anniversary date of the filing of its registration to do business in the Commonwealth. The report shall contain in the order provided in 950 CMR 112.22, all information required to be included in the certificate, and any other matters the authorized person determine to include therein. The annual report may amend any information in the certificate except that any change pertaining to registered agent or office must be made as provided in 950 CMR 112.13. The report shall specifically identify each amendment. The fee for filing the annual report shall be \$500.00.

112.28: Certificates Issued Pertaining to Limited Liability Companies

The following certificates are available from the Division upon payment of the required fee. The Division shall:

(1) issue a certificate of existence to any limited liability company if it appears from the records of the Division that the limited liability company has legal existence, no certificate of cancellation has been filed with respect to the limited liability company and the limited liability company has not been administratively dissolved;

(2) issue a certificate of good standing concerning any limited liability company if it appears from the Division records that the limited liability company has legal existence, has filed all annual reports due and paid all fees with respect to such reports, no certificate of cancellation has been filed with respect to the limited liability company, and the limited liability company has not been administratively dissolved. The certificate shall indicate the existence and good standing status of the limited liability company, and shall provide the identity of all managers and persons authorized to act with respect to documents filed with the Division and with respect to real property instruments who are named in the most recent filing made with the Division.

(3) issue a certificate of registration to any foreign limited liability company which appears from the records of the Division to have been duly registered and not withdrawn, canceled or revoked.

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- (4) issue a certificate of good standing concerning any foreign limited liability company if it appears from the Division records that the foreign limited liability company has been duly registered, has filed all annual reports due and paid all fees with respect to such reports, and its registration has not been withdrawn, cancelled or revoked. The certificate shall indicate the existence and good standing status of the foreign limited liability company, and shall provide the identity of all managers and persons authorized to act with respect to real property instruments who are named in the most recent filing made with the Division.
- (5) issue a certificate of legal existence to any limited liability company listing the date of all certificates of amendment* filed or stating that there have been no certificates of amendment filed with the Division if it appears from the records of the Division that the limited liability company has legal existence and has not been cancelled or dissolved;
- (6) issue a certificate of registration listing the dates of all certificates of amendment* that have been filed or stating that no certificates of amendment have been filed to any foreign limited liability company which appears from the records of the Division to have been duly registered and not withdrawn, cancelled or revoked.

*Does not include amendments made within an annual report.

112.29: Fees and Methods of Payment

- (1) The fees relative to limited liability companies are as follows:
- | | |
|---|----------|
| (a) Certificate of Organization | \$500.00 |
| (b) Annual Report | \$500.00 |
| (c) Name Reservation/Transfer | \$ 30.00 |
| (d) Amendment | \$100.00 |
| (e) Restated Certificate | \$100.00 |
| (f) Certificate of Merger/Consolidation | \$100.00 |
| (g) Certificate of Cancellation | \$100.00 |
| (h) Foreign Registration | \$500.00 |
| (i) Foreign Amendment | \$100.00 |
| (j) Foreign Annual Report | \$500.00 |
| (k) Foreign Cancellation | \$100.00 |
| (l) Foreign Withdrawal | \$100.00 |
| (m) Certificate of Good Standing | \$ 25.00 |
| (n) Certificate of Existence | \$ 12.00 |
| (o) Certificate of Registration | \$ 12.00 |
| (p) Certificate of Legal Existence w/amendments | \$ 25.00 |
| (q) Certificate of Registration w/amendments | \$ 25.00 |
- (2) Filing fees, and fees for the copying of documents and the issuance of documents may be paid for by the following methods:
- In Person: cash, personal or cashier's check, or money order;
 - By Mail: personal or cashier's check, or money order; or
 - By Electronic Transmission or Facsimile: MasterCard, Visa, electronic funds transfer or debit card.
- (3) Personal checks, cashiers checks, and money orders must be payable to the Commonwealth of Massachusetts. The drawer must be acceptable to the filing office. Each check must be for an amount equal to the cost of the service and be drawn on a bank acceptable to the filing office.
- (4) Payment by MasterCard, Visa or debit card shall be accepted by the filing office for electronic or facsimile transactions. Remitters shall provide the Division with the following information:
- The card number;
 - The expiration date of the card;
 - The name of the card issuer;

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- (d) The name of the person or entity to whom the card was issued; and
- (e) The billing address for the card.

(5) Payment by electronic funds transfer under National Automated Clearing House Association (NACHA) Rules from remitters who have entered into appropriate NACHA approved arrangements for those transfers, and who authorize the relevant transfer pursuant to 950 CMR 113.00, will be accepted only for facsimile and electronic transmissions.

(6) Payment will not be deemed tendered until the issuer or agent has confirmed to the filing office that payment will be forthcoming.

112.30: Public Inspection of Records

The records of the Division pertaining to limited liability companies shall be available for inspection during regular business hours

REGULATORY AUTHORITY

950 CMR 112.00: M.G.L. c. 156C.

NON-TEXT PAGE