

Chapter 57C.

North Carolina Limited Liability Company Act.

Article 1.

General Provisions.

Part 1. Short Title; Reservation of Power; Definitions.

§ 57C-1-01. Short title.

This Chapter is the "North Carolina Limited Liability Company Act" and may be cited by that name. (1993, c. 354, s. 1.)

§ 57C-1-02. Reservation of power to amend or repeal.

The General Assembly has power to amend or repeal all or part of this Chapter at any time and all domestic limited liability companies and foreign limited liability companies subject to this Chapter are governed by the amendment or repeal. (1993, c. 354, s. 1.)

§ 57C-1-03. Definitions.

The following definitions apply in this Chapter, unless otherwise specifically provided:

- (1) Articles of organization. – The document filed under G.S. 57C-2-20 of this Chapter for the purpose of forming a limited liability company, as amended or restated.
- (2) Bankrupt. – Bankrupt under the United States Bankruptcy Code, as amended, or insolvent under State insolvency laws.
- (3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not such trade, investment, purpose, or activity is carried on for profit.
- (3a) Business entity. – A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (4) Corporation or domestic corporation. – Has the same meaning as in G.S. 55-1-40(4).
- (5) Court. – Includes every court and judge having jurisdiction in the case.
- (5a) Director. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with, or is one of a group of persons so vested with, the authority to direct the management of the limited liability company's affairs.

- (6) Distribution. – A direct or indirect transfer of money or other property or inurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their membership interests.
- (6a) Domestic nonprofit corporation. – A corporation as defined in G.S. 55A-1-40(5).
- (6b) Executive. – For any limited liability company the management of whose affairs is vested in whole or in part in persons other than its managers pursuant to G.S. 57C-3-20(b), any person who is so vested with authority to participate in the management of the limited liability company's affairs under the direction of the limited liability company's managers or directors.
- (7) Foreign corporation. – Has the same meaning as in G.S. 55-1-40(10).
- (8) Foreign limited liability company. – An unincorporated organization formed under laws other than the laws of this State, that affords to each of its members, pursuant to the laws under which it is formed, limited liability with respect to the liabilities of the organization.
- (9) Foreign limited partnership. – Has the same meaning as in G.S. 59-102(5).
- (9a) Foreign nonprofit corporation. – A foreign corporation as defined in G.S. 55A-1-40(11).
- (10) Individual. – A human being.
- (10a) Liabilities, debts, and obligations. – Have one and the same meaning and are used interchangeably throughout this Chapter. Reference to "liabilities," "debts," or "obligations" whether individually or in any combination, is deemed to reference "all liabilities, debts, and obligations, whether arising in contract, tort, or otherwise."
- (11) Limited liability company or domestic limited liability company. – An entity formed and existing under this Chapter.
- (12) Limited partnership or domestic limited partnership. – Has the same meaning as in G.S. 59-102(8).
- (12a) Management of the affairs. – In respect of an entity, unless the context indicates otherwise, the authority to direct and participate in the management of the entity.
- (13) Manager. – Has the following meanings: (i) with respect to a domestic limited liability company, any person designated in, or in accordance with, G.S. 57C-3-20(a), and (ii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company.
- (14) Member. – A person who has been admitted to membership in the limited liability company as provided in G.S. 57C-3-01 until the person's membership ceases as provided in G.S. 57C-3-02 or G.S. 57C-5-02.

- (15) Membership interest or interest. – In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including any share of the profits and losses of the limited liability company, any right to receive distributions of the limited liability company assets, any right to vote on matters relating to the limited liability company, and any right to participate in the management of the limited liability company's affairs.
- (16) Operating agreement. – Any agreement, written or oral, of the members with respect to the affairs of a limited liability company and the conduct of its business that is binding on all the members. An operating agreement shall include, in the case of a limited liability company with only one member, any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.
- (16a) Organizer. – A person who executes the articles of organization of a limited liability company in the capacity of an organizer.
- (17) Person. – An individual, a trust, an estate, or a domestic or foreign corporation, a domestic or foreign professional corporation, a domestic or foreign partnership, a domestic or foreign limited partnership, a domestic or foreign limited liability company, an unincorporated association, or another entity.
- (17a) Principal office. – The office, in or out of this State, where the principal executive offices of a domestic or foreign limited liability company are located, as designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign limited liability company that has not yet filed an annual report, in its articles of organization or application for a certificate of authority, respectively.
- (18) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. (1993, c. 354, s. 1; 1995, c. 351, ss. 1, 2; 1999-189, s. 1; 1999-369, ss. 3.2, 3.3; 1999-456, s. 52(a); 2000-140, s. 101(t); 2001-387, ss. 48-52.)

§§ 57C-1-04 through 57C-1-19. Reserved for future codification purposes.

Part 2. Filing Documents.

§ 57C-1-20. Filing requirements.

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

- (1) By a manager of the limited liability company;

- (2) If the limited liability company has not been formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or
- (3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (1993, c. 354, s. 1; 1999-189, s. 2.1; 1999-369, s. 3.1; 2000-140, s. 101(t); 2001-358, s. 8(a); 2001-387, ss. 53, 155, 173, 175(a); 2001-413, s. 6.)

§ 57C-1-21. Forms.

- (a) The Secretary of State may promulgate and furnish on request forms for:
 - (1) An application for a certificate of existence;
 - (2) A foreign limited liability company's application for a certificate of authority to transact business in this State; and
 - (3) A foreign limited liability company's application for a certificate of withdrawal.

If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory. (1993, c. 354, s. 1.)

§ 57C-1-22. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

<u>Document</u>	<u>Fee</u>
(1) Articles of organization	\$125.00
(2) Application for reserved name	10.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Limited liability company's statement of change of registered agent or registered office or both	5.00
(7) Agent's statement of change of registered office for each affected limited liability company	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of organization	50.00
(11) Restated articles of organization without amendment of articles	10.00
(12) Restated articles of organization with amendment of articles	50.00
(12a) Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13) Articles of merger	50.00
(14) Articles of dissolution	30.00
(15) Cancellation of articles of dissolution	10.00

(16) Certificate of administrative dissolution	No fee
(16a) Application for reinstatement following administrative dissolution	100.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	250.00
(20) Application for amended certificate of authority	50.00
(21) Application for certificate of withdrawal	10.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Articles of correction	10.00
(24) Application for certificate of existence or authorization (paper)	15.00
(24a) Application for certificate of existence or authorization (electronic)	10.00
(25) Annual report	200.00
(26) Any other document required or permitted to be filed by this Chapter	10.00
(27) Repealed by Session Laws 2001-358, s. 8(c).	

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Fifteen dollars (\$15.00) for a paper certificate.
- (3) Ten dollars (\$10.00) for an electronic certificate. (1993, c. 354, s. 1; 1997-456, s. 55.3; 1997-475, s. 5.3; 1997-485, ss. 12, 20; 2001-358, s. 8(c); 2001-387, ss. 54, 173, 175(a); 2001-413, s. 6; 2002-126, ss. 29A.29, 29A.30.)

§§ 57C-1-22.1 through 57C-1-22.2: Repealed by Session Laws 2001-358, s. 8(b), effective January 1, 2002.

§§ 57C-1-23 through 57C-1-27: Repealed by Session Laws 2001-358, s. 8(b), effective January 1, 2002.

§ 57C-1-28. Certificate of existence.

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence or authorization sets forth:

- (1) The domestic limited liability company's name or the foreign limited liability company's name used in this State;

- (2) That (i) the domestic limited liability company is duly formed under the law of this State, the date of its formation, and the period of its duration, or (ii) that the foreign limited liability company is authorized to transact business in this State;
- (3) That the articles of organization of a domestic limited liability company or the certificate of authority of a foreign limited liability company has not been suspended under G.S. 105-230 for failure to pay a tax or fee or file a report or return, and that the limited liability company has not been administratively dissolved for failure to comply with the provisions of this Chapter;
- (4) That articles of dissolution have not been filed; and
- (5) Other facts of record in the Office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this State. (1993, c. 354, s. 1.)

§ 57C-1-29: Repealed by Session Laws 2001-358, s. 8(b), effective January 1, 2002.

Part 3. Secretary of State.

§ 57C-1-30. Powers of the Secretary of State.

The Secretary of State has the power reasonably necessary to perform the duties required by this Chapter. (1993, c. 354, s. 1.)

§ 57C-1-31. Interrogatories by Secretary of State.

The Secretary of State may propound to any foreign or domestic limited liability company that the Secretary of State has reason to believe is subject to the provisions of this Chapter, and to any manager thereof, such written interrogatories as may be reasonably necessary and proper to enable the Secretary of State to ascertain whether the limited liability company is subject to the provisions of this Chapter or has complied with all of the provisions of this Chapter applicable to it. Subject to applicable jurisdictional requirements, the interrogatories shall be answered within 30 days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a foreign or domestic limited liability company, they shall be answered by any manager thereof. The Secretary of State shall certify to the Attorney General for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Chapter requiring or permitting action by the Attorney General. (1993, c. 354, s. 1.)

§ 57C-1-32. Penalties imposed upon domestic and foreign limited liability companies for failure to answer interrogatories.

(a) If a foreign or domestic limited liability company fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter, the Secretary of State may suspend its articles of organization or its certificate of authority to do business in this State.

(b) Each manager of a foreign or domestic limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor. (1993, c. 354, s. 1; 1994, Ex. Sess., c. 14, s. 39.)

§ 57C-1-33. Information disclosed by interrogatories.

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as the Secretary of State's official duty may require the same to be made public or in the event the interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action or proceedings by this State. (1993, c. 354, s. 1.)