

**322B.03 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **Acquiring organization.** "Acquiring organization" means the limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

Subd. 3. **Address.** "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which must not be a post office box.

Subd. 4. [Repealed, 1999 c 85 art 2 s 95]

Subd. 5. [Repealed, 1999 c 85 art 2 s 95]

Subd. 6. **Articles or articles of organization.** "Articles" or "articles of organization" means, in the case of a limited liability company organized under or governed by this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of conversion, articles of abandonment, and articles of termination. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the foreign limited liability company's state of organization.

Subd. 6a. **Authenticated.** "Authenticated" means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the limited liability company, or to a manager or agent of the limited liability company authorized by the limited liability company to receive the communication, and that the communication sets forth information from which the limited liability company can reasonably conclude that the communication was sent by the purported sender.

Subd. 7. **Board or board of governors.** "Board" or "board of governors" means the board of governors of a limited liability company.

Subd. 8. **Board member.** "Board member" means a natural person serving on the board of governors in the case of a limited liability company and a natural person serving on the board of directors in the case of a corporation.

Subd. 9. [Repealed, 1999 c 85 art 2 s 95]

Subd. 10. **Class.** "Class," when used with reference to membership interests, means a category of membership interests that differs in one or more rights or preferences from another category of membership interests of the limited liability company.

Subd. 11. **Closely held limited liability company.** "Closely held limited liability company" means a limited liability company that does not have more than 35 members.

Subd. 12. **Constituent organization.** "Constituent organization" means a limited liability company or a foreign limited liability company or a domestic corporation or a foreign corporation that:

(1) in a merger is either the surviving organization or an organization that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

Subd. 13. **Contribution agreement.** "Contribution agreement" means an agreement between a person and a limited liability company, under which:

(1) the person agrees to make a contribution in the future; and

(2) the limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

Subd. 14. **Contribution allowance agreement.** "Contribution allowance agreement" means an agreement between a person and a limited liability company, under which:

(1) the person has the right, but not the obligation, to make a contribution in the future; and

(2) the limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution, and reflect the contribution in the required records.

Subd. 15. **Dissolution.** "Dissolution" means that the limited liability company has incurred an event under section 322B.80, subdivision 1, subject only to sections 322B.823 and 322B.85, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.

Subd. 16. [Repealed, 1999 c 85 art 2 s 95]

Subd. 17. **Distribution.** "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

Subd. 17a. **Domestic corporation.** "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 302A.

Subd. 17b. **Electronic communication.** "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Subd. 18. **Filed with the secretary of state.** "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, record the document in the Office of the Secretary of State, and return a document to the person who delivered it for filing.

Subd. 19. **Financial rights.** "Financial rights" means a member's rights:

(1) to share in profits and losses as provided in section 322B.326;

(2) to share in distributions as provided in section 322B.50;

(3) to receive interim distributions as provided in section 322B.51; and

(4) to receive termination distributions as provided in section 322B.873, subdivision 1, clause (3).

Subd. 19a. **Foreign corporation.** "Foreign corporation" means an organization organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 302A.

Subd. 20. **Foreign limited liability company.** "Foreign limited liability company" means a limited liability company that is organized under or governed by laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

Subd. 21. **Good faith.** "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

Subd. 22. **Governance rights.** "Governance rights" means all a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

Subd. 23. **Governing body.** "Governing body" means the body of an organization that has been charged with managing or directing the management of the business and affairs of the organization and which, if not the owners themselves, is responsible directly to the owners of the organization. In the case of a domestic limited liability company, the governing body is the board of governors, and in the case of a domestic corporation the governing body is the board of directors.

Subd. 24. **Governor.** "Governor" means a natural person serving on the board of governors.

Subd. 25. **Intentionally.** "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person intentionally violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

Subd. 26. **Know and knowledge.** A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know of the fact.

Subd. 27. **Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, manager, partner, or associate, of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of a person or a person's estate.

Subd. 28. **Limited liability company; domestic limited liability company.** "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter.

Subd. 29. **Manager.** "Manager" means the chief manager, the treasurer, a person elected, appointed, or otherwise designated as a manager pursuant to section 322B.676, and any other person considered elected as a manager pursuant to section 322B.68.

Subd. 30. **Member.** "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company. A person may be a member without having voting rights.

Subd. 31. **Membership interest.** "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 322B.31, a member's governance rights, and a member's right to assign governance rights as provided in section 322B.313.

Subd. 31a. **Nonprofit limited liability company.** "Nonprofit limited liability company" means a limited liability company that is a nonprofit limited liability company under section 322B.975.

Subd. 32. **Notice.** (a) "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

(b) In all other cases, "notice" is given to a person when:

(1) mailed to the person at an address designated by the person or at the last known address of the person;

(2) deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last known address of the person;

(3) communicated to the person orally;

(4) handed to the person; or

(5) left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.

(c) Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice by deposit for delivery is given when deposited for delivery as provided in paragraph (b), clause (2), after having made sufficient arrangements for payment by the sender.

(d) Notice is deemed received when it is given.

Subd. 33. **Bylaws.** "Bylaws" means rules, resolutions, or other provisions that:

(1) relate to the management of the business or the regulation of the affairs of the limited liability company; and

(2) have been made expressly part of the bylaws by the action, taken from time to time under section 322B.603, by the board of governors or the members.

Subd. 34. **Organization.** "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 35. **Owners.** "Owners" means members in the case of a limited liability company and shareholders in the case of a corporation.

Subd. 36. **Ownership interests.** "Ownership interests" means membership interests in the case of a limited liability company and shares in the case of a corporation.

Subd. 36a. **Parent.** "Parent" of a specified organization means an organization that directly or indirectly through related organizations owns more than 50 percent of the voting power of the membership interests, shares, or other ownership interests entitled to vote for governors, directors, or other members of the governing body of the specified organization.

Subd. 37. **Person.** "Person" includes a natural person, an organization, and any other association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 38. **Pertains.** A contribution "pertains" to a particular series when the contribution is made in return for a membership interest in that particular series. A contribution pertains to a particular class when the class has no series and the contribution is made in return for a membership interest in the class. A contribution that pertains to a series does not pertain to the class of which the series is a part.

Subd. 39. **Principal executive office.** "Principal executive office" means an office where the elected or appointed chief manager of the limited liability company has an office. If the limited liability company has no elected or appointed chief manager, principal executive office means the registered office of the limited liability company.

Subd. 40. **Registered office.** "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

Subd. 41. **Related organization.** "Related organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

Subd. 41a. **Remote communication.** "Remote communication" means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subd. 42. **Required records.** "Required records" are those records required to be maintained under section 322B.373.

Subd. 43. **Security.** "Security" has the meaning given it in section 80A.41(30).

Subd. 44. **Series.** "Series" means a category of membership interests, within a class of membership interests, that have some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

Subd. 45. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization, a member control agreement, or bylaws or a resolution approved by the governors as required by section 322B.653 or the members as required by section 322B.346.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Subd. 45a. **Subsidiary.** "Subsidiary" of a specified organization means an organization of which more than 50 percent of the voting power of its membership interests, shares, or other ownership interests entitled

to vote for governors, directors, or other members of the governing body of the organization is owned directly or indirectly through related organizations by the specified organization.

Subd. 46. **Successor organization.** "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under section 322B.833, subdivision 6, continues the business of the dissolved and terminated limited liability company.

Subd. 47. **Surviving organization.** "Surviving organization" means the limited liability company or domestic or foreign corporation resulting from a merger.

Subd. 48. **Termination.** "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is filed with the secretary of state under section 322B.826 or is considered filed with the secretary of state under section 322B.75, subdivision 2, clause (3).

Subd. 49. **Vote.** "Vote" includes authorization by written action.

Subd. 50. **Winding up.** "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 322B.873.

Subd. 51. **Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

Subd. 52. **Converted organization.** "Converted organization" means the organization into which a converting limited liability company converts pursuant to sections 322B.781 to 322B.791.

Subd. 53. **Converting limited liability company.** "Converting limited liability company" means a domestic limited liability company other than a nonprofit limited liability company that is governed by this chapter and which converts or intends to convert into another organization pursuant to sections 322B.781 to 322B.791.

Subd. 54. **Governing statute.** "Governing statute" means the statute that governs an organization's internal affairs.

Subd. 55. **Organizational documents.** "Organizational documents" means:

- (1) for a domestic or foreign general partnership, its partnership agreement;
- (2) for a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement;
- (3) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;
- (4) for a business trust, its agreement of trust and declaration of trust;
- (5) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

Subd. 56. **Personal liability.** "Personal liability" means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(1) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(2) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest or interests in, or being a member or members of the organization.

**History:** 1992 c 517 art 2 s 3; 1993 c 137 s 18-22; 1997 c 10 art 4 s 6,7; 1999 c 85 art 2 s 1-4,96; 2002 c 311 art 2 s 1-5; 2004 c 199 art 14 s 36,37; 2005 c 10 art 4 s 20; 2006 c 196 art 1 s 52; art 2 s 10; 2006 c 250 art 2 s 2-9; 2008 c 233 art 2 s 2; art 3 s 2,3; 2010 c 250 art 1 s 40; 2015 c 39 s 14-19