WHY ARKANSAS SHOULD ADOPT THE REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

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I. INTRODUCTION

On April 12, 1993, then-Arkansas Governor Jim Guy Tucker signed into law "The Small Business Entity Tax Pass Through Act," which for the first time authorized the organization of limited liability companies (LLCs) in Arkansas. This Act, which will be referred to in this article as the "Arkansas LLC Act" notwithstanding its unique actual name, has been subsequently amended more than once to remove some of the ambiguities created by the initial legislation.1

In August 1994, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated a Uniform Limited Liability Company Act (ULLCA).2 A few states, including Alabama, Hawaii, Illinois, Montana, Oregon, South Carolina, South Dakota, Vermont, and West Virginia, enacted ULLCA-based LLC statutes, either initially or by replacing their original LLC statutes with the ULLCA. Unfortunately for proponents of uniformity, the ULLCA was introduced after most states (including Arkansas) had already enacted LLC legislation, and the statute never gained the prominence achieved by many other uniform business statutes promulgated by NCCUSL. In fact, no states enacted or, as far as on-line records indicate, seriously considered enacting, the ULLCA from 2003 to 2006. In 2003, NCCUSL initiated a project to amend and update ULLCA, a project that has often been referred to as the ReULLCA or RULLCA.3 It is a mistake to view this process as a simple revision of the original ULLCA, however, as the project in fact involved the drafting of an entirely new act. It

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4. REV. UNIF. LTD. LNK. CO. ACT (2006) (hereinafter "RULLCA"). The author was appionted as an official observer to the RULLCA project, but all views expressed herein are solely those of the author.
is the basic premise of this article that the resulting uniform proposal, referred to here as RULLCA, would provide a number of valuable improvements for Arkansas businesses.

This article will begin with a review of the current state of law relative to Arkansas LLCs, with a particular focus on potentially problematic provisions in our existing statute. It will then provide a general overview of RULLCA, with emphasis on points of similarity and incongruence with our existing LLC Act. Finally, it will offer reasons why RULLCA would offer advantages that justify the adoption of yet another new business statute in this state.

II. THE ARKANSAS LLC ACT

The Arkansas LLC Act consists of a number of provisions codified in Chapter 32 of Title 4 of the Arkansas Code. The Arkansas LLC Act was based primarily on a Draft Prototype LLC Act, contained in a report dated November 19, 1992, produced as a preliminary effort by an American Bar Association (ABA) working group. The Draft Prototype LLC Act was never finalized (the project being abandoned in favor of NCCUSL's work on a uniform statute), and as a result contained a number of provisions that were either downright confusing or at best less than perfectly clear. The Arkansas LLC Act, based on this draft, contained the same ambiguities, some of which have been cleared up with subsequent amendments and some of which remain.

One of the continuing oddities of the Arkansas LLC Act is in fact the name of the statute. Technically called the Small Business Entity Tax Pass

5. Ark. Code Ann. § 4-32-101 to -1401 (LEXIS Repl. 2001). This article will focus primarily on the Arkansas LLC Act as it currently exists. For a considerably more detailed look at the Arkansas LLC Act as originally enacted, see Loring R. Heady & Carol R. Goschke, Arkansas Limited Liability Company Act, 42 S. B. J. 259 (1993).

6. The ABA project was conducted under the auspices of a working group officially entitled the "Working Group on the Prototype Limited Liability Company Act, Subcommittee on Limited Liability Companies, Committee on Partnerships and Unincorporated Business Organizations, Section of Business Law, American Bar Association." This working group produced a Draft Prototype LLC Act in 1992, although the draft was abandoned while still in the preliminary stages and was never formally approved by the ABA or any of its standing sections or committees. See generally Mary Elizabeth Matthews, The Arkansas Limited Liability Company: A New Business Entity In Form, 46 Ark. L. Rev. 791 (1994).

7. In 1994, the new Arkansas LLC Act was the subject of a brief commentary by the author noting some of the ambiguities and potential problems created by the Act as originally enacted. Carol R. Goschke, The Arkansas Limited Liability Company: A Call for Clarification, 1994 Ark. L. Ydva 19. The statute has since been amended to address some of these concerns, although the dissections in the text of this article will highlight some remaining issues, and even some that have been created by the legislative solutions to the original problem.

Through Act, that cumbersome name is virtually never used. Moreover, the statute does not require that entities formed be small in terms of the numbers of owners, the amount of funds involved or income produced, or in any other sense. In addition, there is no requirement that Arkansas LLCs retain partnership tax status (which would gain them tax pass through benefits) or any suggestion that LLCs are the only entity eligible for such preferred status. Presumably included to give legislators an idea of what the original act was intended to accomplish, the name is in fact misleading and unnecessarily cumbersome. On the other hand, as virtually no one uses it, this is a small flaw indeed.

A. Subchapter 1: Definitions

Ironically, one of the most intriguing and potentially troublesome requirements of the Arkansas LLC Act as currently written shows up in the most innocuous sections, the definitions provision. Buried amidst the harmless and generally helpful definitions is the following language describing the LLC's "operating agreement": "Operating agreement' means the written agreement which shall be entered into among all of the members as to the conduct of the business and affairs of a limited liability company." The problems with this provision are the inclusion of the word "written," and the apparent requirement that "all members" must enter into the agreement if it is one that governs "conduct of the business and affairs" of the LLC.

The suggestion in this definitions section that an LLC operating agreement must be in writing is problematic in a number of respects. First, when one looks at the other statutory provisions dealing with operating agreements, there is room for confusion about whether only written operating agreements are permissible. One section of the statute specifies that an LLC must maintain a copy of the operating agreement at the principal place of business. Another section says, however, that "an operating agreement which is in writing" may limit liability of members or manager for monetary damages for breach of duty, or may provide for indemnification, implying at least that it is also possible to have an operating agreement that is not in writing. In fact, some provisions in the Arkansas LLC Act refer only to "operating agreement" while others specifically refer to one which is written, as
if there was a valid distinction to be drawn.13 Presumably, if only written documents satisfy the definition of "operating agreement," this would not be the case.

Of course, it is possible that there may be agreements between or by the members and the LLC that are not technically operating agreements, but then one wonders what is it that must be included in an operating agreement, or what it is that makes such an agreement into one that satisfies the statutory definition, triggering such requirements as the obligation to maintain a copy at the LLC's registered office?14 The definitions section suggests that an operating agreement is one that deals with "conduct of the business and affairs" of the LLC.15 This could encompass a large number of documents.

One might wonder if this really matters. After all, what is the consequence of failing to maintain copies of such agreements in the LLC's registered office?16 Certainly, the statute itself provides no express penalty, and no reported case appears to have addressed this issue. That does not mean, however, that the potential consequences might not be very serious. One concern here is with the possibility of piercing the veil of limited liability.

Piercing the veil is a legal doctrine that allows courts to disregard statutorily authorized limited liability in business enterprises in order to allow business creditors to access assets of owners or sometimes related entities. Originally applied in the corporate context, the rule allowed courts to pierce the veil of limited liability offered to owners of a business when the owners themselves failed to respect the enterprise as a distinct legal entity.17 The traditional test for piercing in a corporate context has been formulated in a

13. Compare the introductory language in such sections as Ark. Code Ann. § 4-32-002 and Ark. Code Ann. § 4-33-405(c) & (e) ("Unless otherwise provided in an operating agreement . . .") with Ark. Code Ann. § 4-32-404 ("An operating agreement which is in writing . . .") and Ark. Code Ann. § 4-33-405 & 503 ("Unless otherwise provided in writing in an operating agreement . . .").


15. Id. § 4-32-102(1) (LEXIS Repl. 2001).

16. Note that there is another section of the act that requires an Arkansas LLC to maintain copies of the current and all outdated operating agreements at the company's principal place of business. Id. § 4-32-005(a)(4) (LEXIS Repl. 2001). This section expressly provides, however, that failure to keep the required records "shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company." Id. § 4-32-404(b).

17. Actually, it is almost impossible to articulate an accurate test for when the veil of limited liability will be pierced. Prawak, Einhorn/Brook and Daniel Puchel declared in the mid-1980s that veil piercing "requires a high level of proof. Like lightning, it is rare, severe, and unpredictable." Prawak H. Einhorn/Brook and Daniel R. Puchel, Limited Liability and the Corporation, 52 U. Chi. L. Rev. 89, 89 (1985). Stephen Bainbridge has complained that its use is "rare, unprecedented, and arbitrary," and completely lacking in "bright-line rules for deciding when courts will pierce the corporate veil." Stephen M. Bainbridge, Abolishing Veil Pircing, 28 J. Corp. L. 479, 535, 513 (2003).
Arkansas LLC Act making it clear that the written operating agreement can dispense with the need to keep these records, which would logically not be possible if they had to be in the operating agreement itself. Similarly, although an agreement to contribute is not enforceable under the statute unless in writing, the Arkansas LLC Act includes no suggestion this promise must be the operating agreement. In fact, the statute requires absolutely nothing to be in a written operating agreement, except that there is apparently a requirement that something must be in a written operating agreement.

The least problematic situation would be if the members of the LLC wish to adopt all of the default rules embodied in the statute. Then, presumably, an agreement encompassing only the default rules would suffice. Although this leaves open the issue of whether all members have to sign the agreement, at least one would have a simple written operating agreement. What if, however, the members wish to change one or more of the default rules? This might reasonably be construed as the kind of agreement that relates to the conduct of business and affairs of the LLC. Must it then be in writing? Must it then be entered into by all members? Signed by all of them?

The statutory requirement that an operating agreement be in writing, when there is no corresponding explanation of what must be in this document, raises all sorts of troubling issues. What exactly has to be in the writing?

23. Id. § 4-32-902(a) (LEXIS Rep. 2001).
24. The so-called statute of frauds might provide an independent basis for requiring certain provisions of an operating agreement to be in writing, and indeed, might require that some operating agreements themselves be in writing in order to be enforceable. Certainly an agreement among the members of an LLC concerning conveyance of interests in land would need to be in writing in order to be enforceable. See id. § 4-59-101(h)(4). Similarly, if the terms of the LLC were to last more than one year, and this requirement was to be embodied in an operating agreement, the requirement that a contract "that is not to be performed within one (1) year from the making of the contract" must be in writing might come into play. Id. § 4-59-101(p)(6). On the other hand, if the dispute is only between the parties to the contract, it might be possible that they would be prevented from using the statute of frauds on such grounds as promissory estoppel. See generally U.S. v. Coats, 527 Ark. 480, 631 S.W.3d 201 (2018) (allowing one party to an oral contract for the sale of goods to raise promissory estoppel to prevent the other party from asserting the defense of the statute of frauds).
25. A "default rule" is a statutory presumption that may be changed by agreement of the parties. For example, a default rule applicable to manager-managed LLCs is that managers are to be elected and removed or replaced by appraisal or consent of more than one-half of the number of members, and managers to select serve indefinitely. Ark. Code Ann. § 4-32-40 (LEXIS Rep. 2001). There are all kinds of default rules in the statute, ranging from sharing of profits to management rights to ability of members to leave and economic consequences of such withdrawal.
26. Id. § 4-32-101(1) (LEXIS Rep. 2001). The definitions section appears to say that an operating agreement must be a writing executed by all members.

27. See infra note 24.
29. Id. § 4-32-205.
30. Id. § 4-32-202(3).
31. Id. § 4-32-206(a).
32. See infra note 24. The cross agreement? Does it have to be a single unified document? Does it have to be signed? Does failure to comply with the statute significantly increase the risk of piercing? Most states deal with these issues by adopting the usual informal rule that has long governed partnerships, even LLPs and LLLPs: an agreement as to day to day operations and affairs need not be in writing. This does not mean written agreements are not advisable, of course, and it does not answer the question of whether the statute of frauds might apply to some types of agreements or provisions. It merely recognizes the reality of informal business relations and does not impose a statutory formality that seems to have little real utility.

B. Subchapter 2: Formation of Domestic LLCs

Turning from the definitions section, the Arkansas LLC Act next addresses how domestic LLCs are to be formed. As with most LLC acts, the Arkansas statute permits formation of domestic LLCs by presentation of a document containing very limited information to the appropriate state official. In Arkansas, "articles of organization" must be delivered (manually or electronically) to the Secretary of State for filing. In addition, Arkansas is in line with the vast majority of American jurisdictions in presuming that an LLC will be managed by its members, a presumption embodied in the requirement that in order to have management by managers, a provision to that effect must be included in the articles of organization.

The next provision in the Arkansas LLC Act that seems to create significant potential for mischief appears in the section of the Act governing the date of formation for a domestic LLC. As currently written, "[u]nless a delayed effective date is recited . . . a limited liability company is formed when the articles of organization are delivered to the Secretary of State for filing, even if the Secretary of State is unable at the time of delivery to make the determination required for filing by [section] 4-32-1308." The cross
referred provision includes very minor requirements for proper filing of documents, such as the specification that a document: (1) must be permitted under the chapter (clearly the case for articles of organization); (2) must contain required information (extremely minimal) and may contain other information; (3) must be printed or typed in English; (4) must be signed; and (5) must be accompanied by a copy or duplicate original. This section goes on to provide that so long as a non-conforming document is corrected within twenty days after the Secretary of State provides notification of nonconformance, the documents are deemed to have been filed as of the date of delivery.24

What is the problem with this approach? First consider the case of a perfectly acceptable filing first. Articles of organization arrive in the mail at the Secretary of State’s office to be filed. The articles must be checked not only for compliance with the statute but cross referenced to make certain that there is no other entity with that name or one which would be confusingly similar. There may be a backlog of filings waiting to be checked. The delivery may come late in the day. Or, hard to imagine in these days of reliance on technology, the computers may be temporarily unavailable. For one or more of these reasons, it may not be possible to file the document on the date of delivery. Regardless, the statute says the document is deemed to have been filed upon delivery. How does one prove, however, when the document was delivered?25

If you check the Secretary of State’s convenient, online data base for entity formation, you can readily ascertain the filing date for new entities.26 There is no such date for delivery date, and a lengthy phone conversation with staff members at the Secretary of State’s office revealed only confusion when this information was requested.27 In the event of litigation over the precise date of formation, this unavailability of information might prove difficult. A savvy business person might utilize certified mail, with a return receipt. Electronic filings might also show a date of delivery. But neither of these is required by the statute, nor, according to the Secretary of State’s

33. Id. § 4-32-1308.
35. The time of formation could be important in the event of subsequent litigation involving liability arising from acts taken during this “gap” period, between the delivery of the articles and their actual filing.
36. Entity search option on the Arkansas Secretary of State’s webpage, http://www.sos.arkansas.gov and accessible by looking at the options under “Online Services.”
37. Telephone conversation with Secretary of State’s office in Little Rock, Arkansas (Mar. 16, 2007).

office staff, are they the only way in which such documents are presented for filing?28

In addition, consider the even-more-confusing case of non-conforming documents. Suppose articles are mailed in, and in a day or two the Secretary of State determines that the requested name is unavailable or the articles are perhaps non-complying because they do not contain the required words or abbreviations indicating that the entity to be formed is an LLP. Notice is sent out that the articles are not accepted for filing. Within twenty days of that mailing, the organizers propose another name (hopefully in compliance with all statutory requirements).29 The new LLC, with the new name, is deemed filed up to twenty days before the notice of non-compliance was sent out.

Persons doing business with the entity, perhaps under the non-compliant name, might well find themselves quite unexpectedly having done business with a limited liability enterprise. And their surprise would not be due to any negligence on their part, as they might have reasonably assumed that an inquiry to the Secretary of State would show a filing if they were dealing with such an entity.

The reality is that no other business entity in Arkansas has such a peculiar date of formation. Corporations are formed when articles of incorporation are filed.30 Limited liability partnerships (LLPs) are formed when the statement of qualification as such is filed.31 Limited partnerships are formed upon filing of the certificate of limited partnership.32 Limited liability limited partnerships are subject to the same rules.33 Nonetheless, the “date of formation” is determined in a fashion which is at best confusing.

38. Id.
39. The problems are of course exacerbated if the proposed alternative is also non-compliant. Then one wonders how long organizers could continue to send in unacceptable articles. Would each return back in time so that it was deemed to have been received and filed in time to make the original articles effective upon receipt? Hopefully, the courts will never have to determine the answer to that question.
40. Ark. Code Ann. § 4-27-123(a)(1) (LEXIS Repl. 2001) (specifying that a document under the Limited Partnership Act of 1987 is effective “at the time of filing on the date it is filed, as evidenced by the Secretary of State’s date and time endorsement.”)
41. Id. § 4-46-1001(c) (LEXIS Repl. 2001) (specifying that LLP status is achieved upon “filing of the statement . . .”). A general partnership, of course, does not require any written documentation at all, and so no filing is expected. On the other hand, partners in a general partnership do not get limited liability, either.
42. Prior to September 1, 2007, this rule was embodied in id. § 4-43-2016(b) (LEXIS Repl. 2001). After that date, Ark. Code Ann. § 4-47-201(a) and (c) provides that a limited partnership comes into existence upon filing of the certificate of limited partnership, as long as the filed document “substantially complies with the statutory requirements.”
43. Prior to September, 2007, the formation of LLPs was governed by the limited partnership statute found in Title 4, Chapter 43. Ark. Code Ann. § 4-43-1100 talked about the requirement to file an application under Ark. Code Ann. § 4-43-703 in order to become and continue as a registered LLP; it did not specifically address the effective date of the application, but there was certainly nothing to suggest any effective date other than upon
delivery" is the current rule for formation of LLCs under the Arkansas LLC Act.

C. Subchapters 3 and 4: Members and Managers of LLCs

The next two subchapters deal with authority and power of members and managers both internally and in dealing with third parties. As originally written, the Arkansas LLC Act included one section dealing with the "agency powers" of members and managers, and another section dealing with management of the LLC. There was a conflict between the two provisions that could have lead to unfortunate results, but this was essentially addressed by the 1997 amendments to the Arkansas LLC Act.

As currently written, the Arkansas LLC Act provides for a mutual agency among the members in language similar to that used in the Uniform Partnership Act:

Except as provided in subsection (b) [where managers are designated in the articles of organization], every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member . . . for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

Although phrased in terms of agency authority, this language clearly creates a default rule of member management in which members of Arkansas LLCs have the legal power to bind the LLC by acts "apparently carrying on in the usual way the business or affairs" of the entity. Subsection (b) of this section permits articles of organization to provide for management by

managers, in which case all agency powers are to be vested in the managers. The legal effect of these provisions on members and other parties is addressed in a subsequent provision of the Arkansas LLC Act, which specifies that "[i]n the event that a member is a non-managing member, the limited liability company shall be governed by the [section dealing with agency authority]." It also provides that "[a]s a rule, unless otherwise provided in an operating agreement, with respect to members, management of the affairs of the limited liability company shall be governed by the [section dealing with agency authority]."

Thus, as to outsiders, the articles of organization should be conclusive as to apparent authority. As between members of the LLC, however, management rights are governed by the section on agency authority only if the operating agreement does not otherwise provide. Although this appears to be a rather cumbersome way to approach the issue, it does not appear to have created much difficulty for businesses, creditors, or the courts.

Subchapter 3 also includes provisions dealing with admissions of members and managers, circumstances under which an LLC is to be charged with knowledge or notice given to members or managers, liability of members and the LLC itself, appropriate parties in the event of litigation, and various professional services that may be performed by LLCs and the professional relationships created in such instances. None of these provisions is either controversial or inconsistent with typical rules applicable to business enterprises in this state.

Subchapter 4 deals with the rights and duties of members and managers. In addition to the provision relating to authority of members and managers, in which case all agency powers are to be vested in the managers, the legal effect of these provisions on members and other parties is addressed in a subsequent provision of the Arkansas LLC Act, which specifies that "[i]n the event that a member is a non-managing member, the limited liability company shall be governed by the [section dealing with agency authority]." It also provides that "[a]s a rule, unless otherwise provided in an operating agreement, with respect to members, management of the affairs of the limited liability company shall be governed by the [section dealing with agency authority]."

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event that there is no agreement to the contrary. Interesting, the section on records includes an express provision that failure to keep any of these records is not to be grounds for imposing personal liability on members or managers for the LLC's debts or obligations. The default rule for sharing of profits is that members are entitled to a repayment of the value of their contributions and then share equally in profits and losses. Although this may come as a surprise to some unsophisticated business people who might assume that profit sharing would be in accordance with the value of contributions, as is the normal case in corporations, this model tracks the traditional approach taken by general partnerships, in Arkansas and elsewhere.

E. Subchapter 6: Distributions and Withdrawal of Members

Subchapter 6 deals with distributions and withdrawal of members. Interim distributions (i.e., those that are made while the LLC's business is continuing) are made as provided in writing in an operating agreement and, unless otherwise provided, are to be shared equally among members and as declared by those persons having management powers in the LLC. The default rule for dissociating members is that, "within a reasonable time after dissociation," they are to be paid the "fair value of the member's interest in
the [LLC]... as of the date of dissociation based upon the member’s right to share in distributions. 74 Members are not presumed to be entitled to distributions in kind,75 and once “a member becomes entitled to receive a distribution,” he or she gains the status of a creditor of the LLC.76

F. Subchapter 7: Ownership and Transfer of Property

Subchapter 7 governs ownership and transfer of property, and most of the rules in these provisions mirror those applicable to partnerships.77 Property transferred to or acquired by the LLC belongs to the entity, and not its members, and may be held in the name of the LLC.78 There are specific rules governing the transfer of real property, designed to provide guidance to those examining title records and wishing to make certain that title has been properly conveyed.79 In member-managed LLCs, any member may transfer title,80 in manager-managed LLCs, any manager has such power.81 There are also rules providing for the legal effect of transfers when the name of the LLC does not appear in the original deed or other document granting title.82 As with partnership interests, LLC membership interests are assignable, but absent agreement to the contrary or consent of the other owners, an assignee becomes entitled only to distributions to which the assignor would otherwise have been entitled.83 Creditors of members who become assignees are entitled to charging orders, but do not ordinarily become members.84 In the event a member dies or ceases to be competent, the executor, guardian, or other representative acquires only the rights of an assignee.85

74. Id. § 4-32-602 (LEXIS Repl. 2001).
75. Id. § 4-32-601 (LEXIS Repl. 2001).
76. Id. § 4-32-604 (LEXIS Repl. 2001).
77. For similar rules applicable to general partnerships in Arkansas, see Ark. Code Ann. § 4-46-702 (transfers of partnership property) and §§ 4-45-501-504 (assignment of partnership property). See Ark. Code Ann. § 4-47-702 for current rules governing assignability of limited partnership interests.
79. Id. § 4-32-702 (LEXIS Repl. 2001).
80. Id. § 4-32-702(a).
81. Id. § 4-32-702(b).
82. Id. § 4-32-702(c) & (d).
83. Id. § 4-32-703 (LEXIS Repl. 2001); compare with Ark. Code Ann. § 4-46-503 for similar rules applicable to general partnerships and Ark. Code Ann. § 4-47-705 for the same rules as applied to limited partnerships.
85. Id. § 4-32-707 (LEXIS Repl. 2001).

G. Subchapter 8: Admission and Withdrawal of Members

Admission and withdrawal of members is dealt with in the next chapter, and again many of these rules mirror those applicable to general partnerships.86 New members are added to an LLC only as provided in writing in the operating agreement or upon written consent of all members.87 Events of dissociation include (1) the substitution of an assignee of all of the member’s ownership interest; (2) the removal of the member in accordance with the operating agreement; (3) the removal of the member by unanimous vote following the assignment of all of his or her membership interest; (4) insolvency; (5) death or incapacity or termination of members that are not individuals; and (6) if the articles or operating agreement provides, by voluntary act.88

The right of members in an LLC to withdraw by voluntary act has a convoluted history in Arkansas. Prior to the 1997 amendment, the section dealing with withdrawal rights read as follows:

Unless an operating agreement provides in writing that a Member has no power to withdraw by voluntary act from a Limited Liability Company, the Member may do so at any time by giving thirty (30) days’ written notice to the other Members, or such other notice as is provided for in an Operating Agreement. If the Member has the power to withdraw but the withdrawal is a breach of an Operating Agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the Member, the Limited Liability Company may recover from the withdrawing Member damages for breach of the Operating Agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of the services the withdrawn Member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in an Operating Agreement or otherwise available under applicable law. Unless otherwise

86. For the provisions on dissociation applicable to general partnerships, see Ark. Code Ann. § 4-46-601-603.
88. Id. § 4-32-802(a)(1)(A) (LEXIS Repl. 2001).
90. Id. § 4-32-802(a)(4)(D). The same rules apply in the case of general partnerships. Id. § 4-46-601(b)(1).
91. Id. § 4-32-802(a)(14)(a). The same rules apply in the case of general partnerships. Id. § 4-46-601(b)(3).
membership status. Obviously, the problems of this section can be eliminated by careful drafting of either the articles or operating agreement, but it is troubling to have default rules that might well operate as a trap for the unwary or uninformed.

H. Subchapter 9: Dissolution of LLCs

Subchapter 9 of the LLC Act governs dissolution of Arkansas LLCs. Under the statutory default rules, Arkansas LLCs are dissolved and wound up as provided in the articles or a written operating agreement upon the written consent of all members, if there are no remaining members, or upon a decree of judicial dissolution on the grounds that "it is not reasonably practicable to carry on the business of the LLC ... in conformity with the operating agreement." Winding up is conducted by persons with management authority or, in the event of wrongful conduct or other cause shown in court, by the circuit court. The statute sets out authority of persons during the winding up process and requires assets to be paid first to creditors, then to former members for distributions owed to them, and then to members as a return of contribution and finally in proportion to their respective rights to share in distributions. The process mirrors typical corporate law provisions, calling for the filing of articles of dissolution and a statutory process for creditors with known and unknown claims that mirrors the corporate law rules.


The majority of the provisions of the Arkansas LLC Act are relatively straight-forward and non-controversial. In fact, most of the rules adopted as default provisions in our current LLC Act are the majority rule. As described above, however, there are a few problematic provisions, and the statute is often ineptly worded, as one might expect from a committee proposal that was in the very early stages of drafting when borrowed. In addition, there are numerous places where it would make sense for the LLC statute to model the approach or language that appears in other business or commercial statutes, rather than sticking out for new territory as our LLC Act currently does. The question then becomes, what would the Uniform LLC Act look like, and would it be a substantial improvement for this state?
III. THE REVISED UNIFORM LLC ACT

The National Conference of Commissioners on Uniform State Laws (NCCUSL) initiated drafting of the original Uniform LLC Act (ULLCA) in 1992, and the NCCUSL adopted a version of ULLCA in 1994. Amended in 1996 in anticipation of the pending changes in the federal tax rules applicable to LLCs, the ULLCA was not as influential among the states as might have been hoped or expected, probably because most states had already enacted LLC legislation before the ULLCA was approved.

In the intervening years, there have been a number of significant developments relating to LLCs, in addition to the tax reform mentioned above. Every state now has an LLC statute, and in a large majority of states, LLC filings surpass the formation of new corporations or at least approach the same levels as new corporate filings.

The Revised Uniform Limited Partnership Act (RUPA), upon which the ULLCA relied heavily, was amended to provide for limited liability partnerships (LLPs) with full shield limited liability, and became the law in Arkansas in 1999. A new Revised Uniform Limited Partnership Act (RULCA) was drafted with those developments in mind. It therefore stands to reason that the proposed Act deserves careful attention in this state, as we strive to be a modern jurisdiction offering convenient and up-to-date choices to businesses wishing to operate here. In very general terms, RULCA is more detailed and more up-to-date than the Arkansas statute. It is also drafted in terms that are consistent with other commercial law statutes, such as RUPA and re-RULPA. In the Prefatory Note to RULCA, the drafters note that among the noteworthy provisions of the uniform proposal is detailed provisions governing the content and effect of the operating agreement, fiduciary duties of persons with management power, charging orders, remedies for oppressive conduct, and derivative claims.

As this article did with the Arkansas LLC Act, the following material will proceed through the RULCA. This article will note significant provisions, pay especial attention to rules that differ significantly from those currently in effect in Arkansas, and focus on any provisions that may appear give reason for pause when considering the suitability of RULCA for this state.

A. Article 1: Introduction, Definitions, and Basic Provisions Regarding LLCs

The initial section of RULCA provides that the official name of the Act shall be the "Revised Uniform Limited Liability Company Act." Setting aside any slight confusion that might be caused in Arkansas because we never adopted the original Uniform Limited Liability Company Act, the choice to go with "Revised" in the title is an interesting one. Most other uniform acts have given up on "Revised" because of the predictable class when one starts contemplating "Revised Revised" uniform acts. Thus, for

had adopted "partial shield" protections, meaning that the partners in an LLP were potentially liable to entity debts other than those arising out of the misconduct of other partners. See, e.g., Ark. Code Ann. § 4-42-507 (repealed effective Jan. 1, 2005).


146. RULCA, supra note 4, Prefatory Note.

147. Id. & 101.
example, the recently promulgated Uniform Partnership Act (1996)\textsuperscript{148} (although itself a revision of the original Uniform Partnership Act)\textsuperscript{149} does not utilize the word "Revised" in its title. However, popular usage suggests that practitioners and academicians continue to think of this as UUPA (the "Revised Uniform Partnership Act"), so the choice to stay with ULLCA is certainly defensible.

The next section\textsuperscript{150} includes definitions, and although most of them are straightforward and pretty much what one would expect to find, there are a few things about this section worth mentioning. First is the definition of "certificate of organization."\textsuperscript{149} The comments indicate that this was a completely deliberate deviation from the more common terminology in state LLC statutes (and the original ULLCA) that generally talks in terms of "articles of organization." The change was designed to emphasize that the certificate is intended only to be the document reflecting creation of the entity and is not expected to include terms relating to the operation of the business.\textsuperscript{151}

Subsection 10 of the definitions section defines manager-management, and makes it clear that ULLCA departs from the original ULLCA model and majority rule that requires that the public document establish the LLC's status as manager-managed rather than the private operating agreement.\textsuperscript{152} This approach is defended on the grounds that ULLCA creates no statutory power to bind the entity, so that there is no need for a public record of the type of management structure utilized by the enterprise. There are specific rules applicable to pre-existing LLCs that become subject to ULLCA, and they provide that the language in the filed document designating management structure is to be treated as if it is part of the operating agreement.\textsuperscript{153} Subsection 13 defines operating agreement, and, as is the rule in most states, there is no requirement that the agreement be in writing.\textsuperscript{154} This is a significant departure from existing Arkansas law, which requires operating agreements to be written.\textsuperscript{155} The reporter notes, however, that the Act "states no rule as to whether the statute of frauds applies to an oral operating agreement."\textsuperscript{156} The comment cites case law that "suggests that an oral agreement to form a partnership or joint venture with a term exceeding one year is within the statute,"\textsuperscript{157} confirming the common sense notion that at the very least it is good practice to have a written operating agreement, whatever the statute requires.

Following the definitions section is a provision that defines knowledge and notice.\textsuperscript{158} These definitions track those generally found in other commercial and business statutes,\textsuperscript{159} with "knowledge" referring to actual knowledge—or knowledge imputed by the statute—as to limitations on authority to transfer real estate, dissolution, termination, merger, conversion, or domestication.\textsuperscript{160} It is worth noting that there are no rules governing attribution of knowledge to the LLC when possessed by or communicated to a member or manager. The reason for this omission, as explained in the comment, is that ULLCA does not give such persons any statutory authority, and therefore there is no need for special rules on attribution.\textsuperscript{161} Similarly, the question of when the LLC is to be charged with knowledge or notice is itself left for the principles discussed in the new Restatement (Third) of Agency.\textsuperscript{162}

Section 104 of ULLCA governs the nature, purpose, and duration of LLCs formed under the act,\textsuperscript{163} and there is really nothing surprising or unique here. An LLC is defined as an entity distinct from its members, it may have any lawful purpose (including those that are not for a profit), and it will (as a default rule) have perpetual duration.\textsuperscript{164} Section 103 gives LLCs the capacity to sue and be sued in its own name and legal power to do acts necessary or convenient for its activities,\textsuperscript{165} while section 106 adopts the conventional internal affairs doctrine to provide that the laws of the state of formation ("this state") govern the internal affairs of an LLC and the liability of members and managers for debts of the LLC.\textsuperscript{166} Section 107 adopts the normal rules that, unless supplanted by particular statute provisions, principles of law and equity "supplement the statute."\textsuperscript{167}

\textsuperscript{148} This statute, with this title, has been adopted in Arkansas and is codified at Ark. Code Ann. §§4-46-101 et seq.

\textsuperscript{149} Arkansas also had adopted the original Uniform Partnership Act. It was codified at Ark. Code Ann. §§4-42-101 et seq. (repealed).

\textsuperscript{150} ULLCA, supra note 4, § 102.

\textsuperscript{151} Id. § 102, comment to Paragraph (1). Arkansas also uses the "articles of organization terminology." Ark. Code Ann. § 4-32-202 (2009).

\textsuperscript{152} ULLCA, supra note 4, § 103, comment to Paragraph (10).

\textsuperscript{153} Id.

\textsuperscript{154} Id. § 102(3).

\textsuperscript{155} See supra notes 10-28 and accompanying text.

\textsuperscript{156} ULLCA, supra note 4, § 102, comment to Paragraph (13).

\textsuperscript{157} Id. (citing Albott v. Hunt, 643 So.2d 589 (Ala. 1994); Pemberton v. Lackey Realty & Constr. Co., 250 So. 768, 770-71, 244 B.W.2d 62, 74 (Miss. 1973); Eiker v. Ten Soj Int'l, Ltd, 759 F.2d 812, 827-28 (2d Cir. 1984)).

\textsuperscript{158} ULLCA, supra note 4, § 103.

\textsuperscript{159} The comment to this section specifically notes consistency with the UCC, and general rules of agency. Id. § 103, comment.

\textsuperscript{160} Id. § 103(2)(3).

\textsuperscript{161} Id. § 103, comment.

\textsuperscript{162} Id.

\textsuperscript{163} Id. § 104(b)-(c).

\textsuperscript{164} ULLCA, supra note 4, § 104(c)-(d).

\textsuperscript{165} Id. § 105.

\textsuperscript{166} Id. § 106.

\textsuperscript{167} Id. § 107.
There are detailed provisions governing the permissible names for an LLC, but the rules embodied in this provision appear generally consistent with the rules in the current Arkansas LLC Act. The name of the LLC must contain specified words or initials designating the entity as an LLC and must be distinguishable from names of other businesses as filed with the Secretary of State unless the current owner consents. Unlike current law, however, there is no requirement that the language be in English. Section 109 allows for advance reservation of a proposed name, for a 120-day period.

The next section of RULLCA governs the scope, function, and limitation on what may be included in an LLC's operating agreement, and it is both considerably more detailed and different from current Arkansas law.

The first difference is that under RULLCA, an operating agreement need not be in writing; the significance of this difference has already been discussed in the preceding section of this article addressing the Arkansas LLC Act. As for the substantive provisions that may be included in an operating agreement, RULLCA is far more precise. RULLCA grants very broad but general authority to the operating agreement to govern relations between the members and the LLC, as well as their relative rights and obligations. To the extent that the operating agreement does not address matters governed by RULLCA, the act itself will provide default rules for the company.

These rules should match those that already exist in Arkansas, although the Arkansas LLC Act does not spell this out quite as cleanly. The first place that RULLCA takes a different direction is in subsection (c) of section 110, which specifies that an operating agreement may not include some kinds of provisions, primarily excessive limitations on fiduciary obligations or the contractual obligation of good faith. Subsection (d) gives back some au-

168. Id. § 108.
169. Id. § 108(a).
170. RULLCA, supra note 4, § 108(b).
171. Id. § 110(c).
173. RULLCA, supra note 4, § 109.
174. Id. § 110.
175. See supra notes 10-28 and accompanying text.
176. RULLCA, supra note 4, § 110(b).
177. Id. § 110(b).
178. Id. § 110(c). While this language would represent a departure from the current LLC statute, Arkansas did adopt similar language as part of its current uniform partnership act. See Ark. Cod. Ann. § 4-46-113 (LEXIS Rep. 2001) (providing limitations on what may be included in a partnership agreement). Note also that the drafters of RULLCA expressly consided the recent Delaware innovation that permits operating agreements to fully eliminate fiduciary duties, and rejected this "ultra-contractual" notion. See RULLCA, supra note 4, § 110(b), comment.
179. RULLCA, supra note 4, § 110(b).
180. Id. § 110(b)(b).
181. Id. §§ 111, 112.
182. Id. § 111.
183. Id. § 112.
184. Id. §§ 112(a), (b).
185. RULLCA, supra note 4, § 112(c).
186. Id. § 112(c).
187. The fact that RULLCA deals with transfers is a potentially significant benefit to this statute, as the problem of transfers in closely held businesses such as LLCs has yet to be clearly resolved by the courts. Transfers also include not only creditors, but heirs and purchasers who have not been accepted as members, and it is easy to see how the interests of current owners and managers might diverge from those of transferees. States that protect transferees to some extent are clearly important, but it is equally important to recognize the need of current owners to operate their business without undue interference. For a further discussion of this issue, see RULLCA § 112(b), cmt.
ment controls only to the extent that third parties have reasonably relied upon it. Otherwise, the agreement controls.

The next four sections all deal with the company’s office and agent for service of process and how process is to be served on an LLC. 188 The first obligates LLCs (both domestic and foreign) to designate an in-state office and agent for service of process. 189 The next explains how an office or agent may be changed by filing of a statement of change, 190 and the one after that explains how an agent may resign. 191 The details of how process is to be served and what happens when an office or agent has not been properly maintained are spelled out in the final section of the first article of RULCAA. 192

B. Article 2: Formation of LLCs and Accompanying Filings

Article 2 of RULCAA deals with formation of the company and various filings associated with formation. 193 The first section in this article deals with the formation and certificate of organization and was actually among the provisions that received the most discussion and comment during meetings. 194 As drafted, one or more persons may form an LLC by acting as organizer(s) and filing a certificate of organization. 195 The certificate of organization is required to contain very minimal information, not even a statement as to how the LLC is to be managed, 196 although additional information may be included if desired by the organizers. 197 The LLC is formed upon filing unless a delayed effective date is specified, 198 as is the usual case for new entities, albeit not under current Arkansas Law.

Article 2 also includes another very significant change from existing Arkansas law governing LLCs: express permission to form a “shelf LLC” that exists before there are any members. 199 The concept of the “shelf LLC” was the portion of this provision that received by far the most attention, both in committee and when drafts of RULCAA were presented to NCCUSL. 200

188. RULCAA, supra note 4, §§ 113–116.
189. Id. § 114. Another option is clearly available, if the organizers decide to amend their certificate of organization instead of a distinct filing.
190. Id. § 115.
191. Id. § 116.
192. Id. §§ 201-209.
193. RULCAA, supra note 4, § 201, cont.
194. Id. § 201(a).
195. Id. § 201(b).
196. Id. § 201(c).
197. Id. § 201(d).
198. Id. § 201(e).
199. Goldthwaite, supra note 145.
200. RULCAA, supra note 4, § 201, cont.

In essence, the draft represents a compromise between those who were in favor of and those who were opposed to permitting organizers to form an LLC prior to the admission of any members. As drafted and recommended, the act allows a certificate of organization to be filed before there are any members, but (1) the certificate itself must explicitly acknowledge this, 201 (2) the LLC exists only in "embryonic" form unless and until the organizer delivers for filing a notice that there is at least one member and this is done within the statutory time frame of ninety days, 202 and (3) if this filing is not made in a timely fashion, the certificate lapses and is legally void. 203 This approach seemed to satisfy most persons concerned about whether shelf registrations were necessary and appropriate to accommodate modern business practices, without inappropriately ignoring the essential nature of the LLC as an amalgamation of partnership and corporate law. 204 At this time, there is no provision for shelf LLCs in Arkansas.

The next section of RULCAA deals with amended and restated certificates of organization and sets out very typical rules for this process. 205 There is a provision allowing courts to order company officials to sign and file documents, 206 and RULCAA also adopts the usual rule that documents are effective upon filing unless a later date is specified. 207 While this would be a change from the current Arkansas LLC Act, 208 this rule accords with the requirements embodied in every other business statute in the state and is, therefore, not only familiar but also makes a great deal more sense for businesses. The next subsection explains the process for correction of filed records. 209 A statement of correction is a relatively straightforward document, and although it might be slightly more complete than most statutes dealing with correcting errors, 209 there is nothing unusual in its terms.

201. Id. § 201(b)(3).
202. Id. § 201(c)(3).
203. Id.
204. See id. § 201 cont.
205. Id. § 202. Nothing in this provision significantly differs from existing Arkansas law. See supra notes 35–44 and accompanying text. Given the current condition possible as a result of the provision that allows formation of an Arkansas LLC upon delivery of the articles rather than upon filing, it might be helpful that this provision explicitly notes that an amendment is effective upon filing.
206. RULCAA, supra note 4, § 204(a).
207. Id. § 205. RULCAA has very precise rules for what happens when a delayed date is mentioned without sufficient specificity. For example, if a delayed date is specified with no time, the time is assumed to be 12:01 am. Id. § 205(e)(3). The statute here acts only as a gap filler, but in the event of a dispute, it would be wise to have such clarity in the legislation.
208. See supra notes 35–44 and accompanying text.
209. RULCAA, supra note 4, § 206.
210. This section explicitly states, for example, that no delayed effective date is permissible. Id. § 206(b). For comparison purposes, the Arkansas LLC Act currently permits corrections to be made, Ark. Code Ann. § 4-32-1309, also by filing of articles of correction, that
The following section, which provides for personal liability for inaccurate information in filed documents, is considerably more complete than the existing Arkansas LLC Act. RULLCA specifies not only that filings are made under penalty of perjury, but also that third parties who suffer loss by relying on inaccurate information may recover from specified persons, including the individuals who signed the document and those having management responsibilities so long as they had notice of the error. The current Arkansas LLC Act specifies criminal penalties for inaccurate information in filed documents, but it does not specify personal liability to third parties who rely on the misinformation.

The next section explains how a certificate of existence or authorization (in the case of a foreign LLC) may be obtained and what it is to include. Although more specific than current Arkansas law, there is nothing particularly remarkable about this provision.

The final section of Article 2 of RULLCA establishes an annual reporting requirement for LLCs. The annual report is to include basic information such as (1) the name of the company; (2) the address for its current registered office and for its agent for service of process; and (3) in the case of foreign LLCs, the state or jurisdiction under which the LLC was formed. There is no equivalent requirement of an annual report for LLCs under the current Arkansas LLC Act, but there are certainly other business forms that are required to make annual filings in this state. The purpose of this provision is somewhat unclear, as there are other sections of the statute that explain how to update the registered office and agent, and it is unclear whether the Secretary of State is supposed to take notice of changes in information included in the annual report. Under RULLCA, however, failure to make the required annual filing is grounds for administrative dissolution, so this may be one way to increase the likelihood of having accurate information for such things as the annual franchise tax forms.

C. Article 3: LLC Members and Managers

Article 3 of RULLCA deals with relations of members and managers to persons who deal with the LLC. It includes topics like agency power of members and managers, optional statements of authority and denial, and general rules about the liability of members and managers. One of the more significant provisions in Article 3 is also one of the shortest: it provides that members of an LLC do not, by reason of that status, have any agency powers. The relatively extensive comments to this section indicate that the reporters were quite aware that this approach departs from both the majority rule and the position taken by the original uniform LLC Act. Although acknowledging that statutory agent authority continues to make sense in the context of general and limited partnerships, the reporters and the Conference ultimately concluded that the virtually limitless set of options for management structure made it inappropriate and potentially misleading to include statutory authority in the case of LLCs. This is, however, one place where RULLCA diverges fairly significantly in its approach from the Arkansas LLC Act.
RULCA also provides for both a statement of authority and statement of denial,297 both derived from the provisions of RUPA (the Revised Uniform Partnership Act).298 Statements of authority are allowed to deal with authority to transfer interests in real property and other matters, but as to the latter, only persons with knowledge of the statement are bound.299 In addition, the statement only applies to non-members, who presumably are bound by agency rules applicable to actual authority.299 The section lists specific information that must appear in a statement of authority and also covers the amendment and cancellation of grants of authority.299 In addition, for authority relative to real estate, the provision requires a double filing, both with the secretary of state and in the appropriate land records.299 If a person named in a statement of authority wishes to disclaim any such responsibility or liability that might accompany a filed statement of authority, the statement of denial authorized in the following section accomplishes this.299

The final section of Article 3 sets out the usual rule that neither members nor managers are liable for entity-level debts solely as a result of their status as member or manager.299 As this is one of the primary hallmarks of the LLC form of business, it offers no surprise at all, nor does it differ from existing Arkansas law.301 Buried in this section, however, is a potentially more controversial provision, which specifies that failure of the LLC "to observe any particular formalities relating to its existence" is not a ground for imposing liability on the members or managers for such debts.299 This is a very helpful rule for clarifying the consequences of failure to observe formalities, vis-a-vis piercing the veil for the LLC,297 but it may or may not be the rule that Arkansas wants to adopt.300

297. RULCA, supra note 9, § 302-303.
299. RULCA, supra note 9, § 302 cmt.
300. § 302(a).
301. § 302(a). RULCA § 302(a) deals with the contents of a statement, and § 302(b) governs its amendment or cancellation. § 302(a)-(b).
302. § 302(a), (b).
303. § 303.
304. § 304(a).
305. See Ark. Code Ann. § 4-32-402(1), specifying that members in an LLC have no personal liability as such.
306. RULCA, supra note 9, § 304(d).
307. § 304(b).
308. § 304(b).
309. For an additional discussion of piercing the veil, see supra note 17-22 and accompanying text.
310. "The Arkansas LLC Act does specify that failure to keep records at the company's principal place of business, as required by Ark. Code Ann. § 4-32-405, 'shall not be grounds for imposing liability on any member or manager for the debts and obligations' of the company, but this limitation is less broad than specifying that a complete disregard of all statutory formalities would have no impact on the liability of participants. Ark. Code Ann. § 4-32-405 (LEXIS Rep. 2003).

The comments to this section suggest that although it is usual to consider "disregard of corporate formalities" in the context of piercing the veil for corporations, "[i]n the realm of LLCs, that factor is inappropriate, because informality of organization and operation is both common and desired."311 The comment also opines that the statutory language "does not preclude consideration of another key piercing factor—disregard by an entity's owners of the entity's economic separateness from the owners."312 Assuming that the courts concur with this interpretation of the applicable language in the statute, which is not certain as some of the statutory provided formalities appear to relate to the economic separation, it is still not entirely clear that it is wise to include a statutory pronouncement that failure to observe formalities shall not be grounds for piercing. There are relatively few statutory formalities, and many of them appeared geared toward protecting members and third parties who deal with LLCs. Failure to keep a registered office and agent, for example, is a statutory formality. Although it alone should not suffice to pierce the veil, if it evidences a pattern of failure to treat the LLC as a separate entity, there seems to be little reason not to consider it as evidence in the context of piercing a claim. Because there are so few statutory imposed formalities, however, it is certainly true that this factor should be considerably less important than in the corporate context.

D. Article 4: Relations Between Members and the LLC

Article 4 of the RULCA deals with relations of members to each other and to the LLC. Logically, the first section in this article deals with becoming a member.313 The section is detailed and provides specific information about single member LLCs and multi-member LLCs, becoming an initial member upon filing of the certificate, and joining as an additional member subsequent to formation.314 There are two specific provisions in this section designed to avoid potential disputes that might arise under less detailed statutes: (1) there are specific rules governing what happens in the event that an LLC ceases to have members;315 and (2) there is an explicit authorization...
for the LLC to have members who either make no contribution or who acquire no transferrable interest in the company, or a combination of the two.246

The following section deals with the form of contributions247 and tracks the usual rule for contributions to business entities. Under this provision, a contribution to an LLC may be in the form of tangible or intangible property, services, or a promise to provide or perform such in the future. This accords with the majority rules and is the rule embodied in the current Arkansas LLC Act.248 It is also consistent with the rules applicable to most other business entities available in Arkansas,249 albeit not the corporation.250

The next section makes persons who agree to make a contribution to the LLC personally liable to the LLC and to creditors who rely upon any such obligation.251 These rules are generally in accord with existing Arkansas law applicable to domestic LLCs,252 except that the current statute expressly requires an agreement to contribute to be in a signed writing in order to be enforceable.253 RULLCA includes no requirement of a signed writing, although it is conceivable that in some instances promises to make certain

246. Id. § 401(c). The comment to this section notes that this provision recognizes that in reality not all LLCs need to be organized for the purpose of making a profit, and that "non-economic" members may be especially likely in this circumstance. Id. § 401(c) cmt. The comment recognizes, however, that usual business practices today may also result in non-economic members.

247. RULLCA, supra note 4, § 402.

248. Ark. Code Ann. § 4-12-501 (LEXIS Repl. 2001) (authorizing contributions of tangible and intangible property, services, and promised to provide or perform such in the future).

249. See, e.g., Ark. Code Ann. § 4-47-101 (LEXIS Supp. 2007); id. § 4-47-501 (LEXIS Supp. 2007) (defining contribution broadly in the context of limited partnerships and LLPs). As to general partnerships and LLPs, the statute typically refers to contributions that include money plus any other property and also takes certain defaults applicable to partnerships, having to agree to provide services. Ark. Code Ann. § 4-46-801(a)(1), (2) (LEXIS Repl. 2001). In addition, contributions subsequent to the formation of the partnership are expressly contemplated and are referenced in other portions of the Arkansas general partnership statute. See, e.g., Ark. Code Ann. § 4-46-807(b) (LEXIS Repl. 2001) (discussing the contributions required as part of the settlement of accounts upon winding up of a partnership).

250. Ark. Code Ann. § 4-27-621(b) (LEXIS Repl. 2001) (authorizing directors to issue shares in Arkansas corporations only in exchange for "money paid, labor done, or property actually received.") Neither proprietary nor so the provision of service assets are legally sufficient. Id. This restrictive approach, which is not out step with the modern trend in business associations, is due to a restrictive requirement applicable to the issuance of corporate stock (but not ownership interests in other forms of business) in the Arkansas state constitution. Ark. Const. art. 12, § 8.

251. RULLCA, supra note 4, § 403(a).

252. Id. § 403(b).


254. Id. § 4-33-503(a).

255. A promise to contribute an interest in real estate, for example, would clearly need to be in writing, regardless of whether the LLC statute included a requirement to this effect. See Ark. Code Ann. § 4-59-101(a)(4) (LEXIS Supp. 2001). Similarly, if the promised contribution was an agreement to provide services for a period in excess of one year, the requirement that a contract "that is not to be performed within one (1) year from the making of the contract" must be in writing might come into play. Id. § 4-59-101(d).

256. RULLCA, supra note 4, § 404-406.

257. Id.

258. Id. § 406(c). Note that the inclusion of dissociated members in this right is different from existing law, which does not talk about dissociated members at all. Ark. Code Ann. § 4-32-601 (LEXIS Repl. 2001) (growing of interests of distributions). RULLCA is like the existing Arkansas LLC Act, however, in failing to provide any default rule for the sharing of losses, assuming that applicable tax rules will be more relevant to LLCs in their structuring of loss sharing arrangements.

259. RULLCA, supra note 4, § 404(b). This is another major difference between RULLCA and the existing Arkansas LLC Act, which provides that, as a default rule, dissociating members are to be paid the fair value of their interest within a reasonable time. Ark. Code Ann. § 4-32-602 (LEXIS Repl. 2001).

260. RULLCA, supra note 4, § 404(c).

261. Id. § 404(d).

262. Current Arkansas law provides that distributions are to be made as provided by the operating agreement, or if not specified there, equally. Ark. Code Ann. § 4-32-601 (LEXIS Repl. 2001). There is no right to in-kind distributions. Ark. Code Ann. § 4-32-603 (LEXIS Repl. 2001). Once a member becomes entitled to a distribution, as to that amount the member has the status and rights of a creditor of the LLC. Ark. Code Ann. § 4-32-604 (LEXIS Repl. 2001). Current Arkansas law does not, however, specifically address the rights of transferees in this context, as does RULLCA, RULLCA, supra note 4, § 404(a).

263. RULLCA, supra note 4, §§ 405-406.

therefore be generally familiar in Arkansas. In very general terms, distributions are impermissible if they render the company insolvent, and distributions made in violation of this limitation may result in liability on the part of those declaring the distribution or knowingly receiving payments from the LLC. These provisions make sense in the context of an entity in which creditors might well be treated unfairly if distributions are permitted at a time when the entity is insolvent. In both the general and limited partnership context, there was always at least one general partner who would have been personally liable if they rendered the partnership insolvent through payments to other partners. Of course, the failure of the existing LLC Act to address this issue is not completely irresponsible, as the Uniform Fraudulent Transfer Act would also apply in most of these situations.

Following the provisions dealing with distributions, RULCA addresses management and various related subjects such as standards of care and indemnification. The section on management follows the approach taken by the overwhelming majority of American jurisdictions (including Arkansas) in providing member management as the default rule. RULCA differs from the typical approach, however, in that it provides that it is the operating agreement alone that controls management structure and not the articles or certificate. RULCA follows most of the default rules that already apply in Arkansas: (1) all persons with management authority are presumed to have an equal voice; (2) significant changes in operations or amendments to the operating agreement require unanimous approval; (3) no particular formality for such approval is imposed; and (4) a manager’s term is perpetual, until a replacement is chosen by a majority of the members. There are several rules that are spelled out more clearly by RULCA than the Arkansas LLC Act, such as a specific note that managers may be removed without notice or cause, and that when a member is serving as manager, dissociation as a member will also automatically end that person’s term as manager.

265. RULCA, supra note 4, § 405.
266. Id. § 406(a).
268. RULCA, supra note 4, §§ 407-10.
269. Id. § 407.
271. RULCA, supra note 4, § 407(b).
272. Id. § 407(b)(2)(A)(i)-(v).
273. Id. § 407(c)(3).
274. Id. § 407(d)(5).

RULCA also includes specific provisions governing indemnification and insurance, specifying that as a default rule the company shall reimburse members or managers who incur expenses or liability in the course of their management responsibilities. The comment notes that while the drafted language itself does not talk about an obligation to advance expenses, this might be read in by the courts in some jurisdictions. Although the current Arkansas LLC Act authorizes an LLC to elect to provide indemnification, there is no equivalent default rule presuming it in existing Arkansas law. RULCA also specifically authorizes an LLC to maintain insurance on behalf of its members and managers. Although the current Arkansas LLC Act is silent on this issue, it would be surprising if the courts decided to impose any limitation on an LLC’s right to do so.

The next section of RULCA sets out “standards of conduct for members and managers,” the statutory language here strikes new ground, departing from the rules of the current Arkansas LLC Act and deviating from the approaches taken in RUPA and re-RUPA as well. The provision first sets out the duties of members in manager-managed companies (the usual default management structure) and then contains a rule shifting those duties to managers in the case of manager-managed operations.

At first glance, some of the language appears to be mirror portions of the fiduciary duties provisions in RUPA, and other parts appear to be based on the language that shows up in corporate law. In fact, RULCA is unique. Prior to the promulgation of RUPA, it was accepted without question that courts would define the boundaries of fiduciary duties and that this was not within the realm of legislation. RUPA, however, changed this in the interests of promoting certainty and freedom of contract and expressly set forth the "only" fiduciary duties owed (in the absence of contractual expansion of such obligations). This approach was followed by NCCUSL when it promulgated the original ULLCA and re-RULCA. After substantial discussion during the approval process for RULCA, NCCUSL declined to include such provisions.
list the "only" fiduciary duties for members and managers in LLCs and instead adopted language which omits any notion that the statutory duties are the only ones owed.288

In addition, RULLCA declined to adopt a gross negligence standard of care, choosing instead to impose a standard of ordinary care (akin to that imposed on corporate directors)289 with the express notation that the business judgment rule applies to test the validity of such a person's conduct.290

There are other parallels to the corporate duty of care, such as the right to rely in good faith on the reports of others,291 and the ability to defend against claims of a breach of duty of loyalty by proving that the challenged transaction was fair to the company.292

It is also worth noting that RULLCA intentionally omitted a provision that appeared in RUPA, the ULLCA, and ULPA, to the effect that a member's conduct furthers the member's own interests.293 Again, the fact that the LLC has such flexibility and may be managed in so many different ways was enough to persuade NCUSLL that a uniform provision of this sort was not desirable.

The last section in Article 4 deals with the rights of members, managers, and dissociated members to receive and obtain information.294 The language in this section is borrowed from ULPA,295 and it is far more extensive and detailed than the provisions that appear in the existing Arkansas LLC Act.296 RULLCA first describes the rights of members in member-managed

286. Id. 287. Ark. Code Ann. § 4-27-830(e) imposes upon corporate directors the duty to act in good faith, with the care an ordinarily prudent person in a like position would exercise under the circumstances, in a manner he reasonably believes to be in the best interests of the corporation. Ark. Code Ann. § 4-27-8500 (LEXIS Supp. 2007). RULLCA imposes on persons in an LLC who act with management authority, the duty to act with the care an ordinarily prudent person in a like position would exercise in similar circumstances, in a manner he believes to be in the best interests of the corporatation. RULLCA § 406(c).

288. Although the duty of care language in RULLCA is expressly made subject to the standards of the business judgment rule, by case law this is also the approach taken with regard to decisions by directors of Arkansas corporations. See, e.g., Long v. Lassiter, 324 S.W.2d 266, 270 (1959); and Hitt v. Sabo, 305 Ark. 672, 678, 800 S.W.2d 396, 399 (1990).


291. RULCA, supra note 4, § 406(e) cont.

292. Id. § 410.

293. Id. § 410, comment.

294. See Ark. Code Ann. § 4-32-405 (LEXIS Supp. 2001) (enumerating categories of information that must be kept at the LLC's principal place of business and giving a right to members to copy company records, whenever kept).

295. RULLCA, supra note 4, § 410(b)(3), (D).

296. Id. § 410(a)(2).

297. Id. § 410(b)(3).

298. Id. § 410(b)(2)(A). Without this section the LLC Act would be consistent with the existing Arkansas LLC Act, this language should be familiar to Arkansas legal practitioners and business persons, as it reflects the approach taken in the Arkansas Business Corporation Act. Ark. Code Ann. § 4-27-1603(c) (LEXIS Supp. 2001).

299. RULLCA, supra note 4, § 410(b)(3).

300. Id. § 410(b).

301. Id. § 410(e). Rights of members who dissociate by reason of death are actually provided by RULLCA § 504.

302. Id. § 410(d).

303. Id. § 410(b). This section makes it clear that no unreasonable restrictions are permissible, but that so long as the restriction or conditions are in the ordinary course of the company's business, reasonable consent to impose such limitations is not required.

304. Id. § 501-504.
The first section in this article follows the lead of traditional partnership law in specifying that an owner's transferable interest in an LLC is a transferable, and even a member's dissolution as a member. In addition, the transfer is made only in management of the company, and RULICA specifically allows the company to notice the restriction at the time of transfer. If the transfer is known to the transferee at the time of transfer apply to the transferee.

The rights of creditors are set forth in the next section, which establishes the procedures, rights, and limitations applicable to charging orders. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor. This charging order acts as a lien and entitles the creditor to receive any distributions that would otherwise be paid to the debtor. The court is given authority to appoint a receiver of distributions (not a receiver for the company) and to make orders necessary to give effect to the shown that distributions will not pay off the debt "within a reasonable time," with the purchaser at a foreclosure sale obtaining the status of transferee. Prior to foreclosure, the debtor, the LLC, or another member of the LLC may extinguish the charging order by satisfying the debt; if the LLC or another member does so, they succeed to the rights of the creditor.

The charging order is statutorily defined as the "exclusive remedy" by which a person seeking to enforce a debt against a member may satisfy the debt from a transferable interest in the LLC. The Arkansas LLC Act, which was enacted prior to the promulgation and adoption of RUPA in this state, also relies on charging orders to enforce the rights of judgment creditors of members. However, the Arkansas statute, however, lacks the detail and specificity of RULICA, although it also provides that a judgment creditor with a charging order becomes only an assignee, with no management rights or right to become a member.

The last section in Article 6 gives special rights to the personal representative of deceased members, including informational rights for the purposes of settling the estate that would have been accorded to the deceased member.

F. Article 6: Dissociation

Article 6 is very short, containing only three sections: one dealing with a member's power to dissolve and wrongful dissolution, the second setting out all the events that can cause dissociation and whether or not such dissociation is wrongful, and the last listing the consequences of dissociation. Given the fact that the LLC has been linked to the partnership form of business, it is not surprising that many earlier LLC statutes continued the partnership tradition of speaking about companies formed for a specific term or undertaking, as was common in partnership law.

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305. RULICA, supra note 4, § 501(c).
311. RULICA, supra note 4, § 502(b). This language did not appear in RUPA.
313. RULICA, supra note 4, § 502(a).
314. Id.
315. Id. § 502(b).
316. Id. § 502(c).
317. Id. § 502(d).
reliance on this concept as unnecessary and confusing in the LLC context. It retains the majority approach of allowing members to have the power to withdraw, even in violation of the agreement of the parties. 328 RULLCA, however, presumes that withdrawal by a member’s express will before termination of the LLC is wrongful. 329 Breach of an express provision of the operating agreement; expulsion by judicial order for wrongful conduct; willful dissolution of a member other than a non-business trust, estate, or individual; and dissociation on account of bankruptcy are also presumed to be wrongful. 329, 330 and such wrongful dissociations give rise to a cause of action to “other members for damages caused by the dissociation.” 330

Arkansas has struggled with how to handle withdrawal rights of members, 331 finally settling on removing the ability of members to withdraw before “dissolution and winding up” of the LLC. 332 This is a rather unusual and somewhat awkward solution, as it at least creates the possibility of a “member” who has renounced all economic interest, and declines to participate in any way, shape, or form in management or operations of the enterprise. This would be awkward for both the company and its managers, who sometimes might desperately need the participation or acquiescence of this “member,” and for the member, too, who might face the risk of liability in the event of piercing of the veil. Moreover, this approach puts Arkansas out of step with other states, almost all of which allow members the power to withdraw even if limits and restrictions are placed upon that right. 332

The next section of RULLCA merely identifies all of the potential causes of a member’s dissociation from the company. 329 Most of these provisions are very typical and should be somewhat familiar to those used to the current Arkansas LLC Act, although there are a number of differences between the two statutes. 329 The first identified event of dissociation in both statutes is a member’s express will, 330 but Arkansas has modified this so that the only time that express will is effective is if the right is given in the ar-
After having followed traditional partnership rules applicable to dissolution relatively closely, RULLCA then limits some traditional events of dissolution from the partnership context to member-managed LLCs. Both bankruptcy and incapacity are retained as events of dissolution under RULLCA but only for member-managed LLCs. The Arkansas LLC Act, on the other hand, continues to stay with the traditional partnership approach, making bankruptcy and incapacity automatic events of dissolution regardless of whether the member in question also has a management role.

Under both RULLCA and the existing Arkansas LLC Act, termination of a trust that is a member results in automatic dissolution. RULLCA also makes final distribution from an estate that is a member an automatic event of dissolution. This is not referenced in the Arkansas statute. Finally, RULLCA also permits dissolution to occur as part of an organic change in the life of the LLC, such as a merger, conversion, domestication, or termination. These are not addressed in the Arkansas statute, although dissolution of members upon termination of the company is probably implicit.

The final section in Article 6 of RULLCA deals with the effect of dissolution upon a member, and the rules here are generally quite straightforward. Upon dissolution, a member loses any rights to participate in management of the company, and fiduciary duties end with regard to matters and events arising after such dissolution. The transferable interest owned by a dissolving member immediately prior to dissolution converts to a membership interest to an interest owned “solely as a transferee.” Finally, dissolution does not discharge any pre-existing debts or obligations to the company or other members.

The Arkansas LLC Act does not gather these rules into one neat provision and, indeed, does not explicitly address all of these issues. The most significant difference between RULLCA and the Arkansas statute relative to dissolution is the right of members who dissociate to receive payment for the fair value of their membership interests. Although RULLCA provides

for no immediate pay-out and instead converts a dissociated member to transferee, the Arkansas LLC Act provides that upon dissolution that does not trigger dissolution and wind-up, the dissociating member is entitled to “receive within a reasonable time after dissolution the fair value of the member’s interest in the [LLC] . . . as of the date of the dissolution.” Although this is of course subject to contrary agreement, in the event of poor planning it is easy to see how an otherwise profitable LLC might be held hostage to the unreasonable demands of a member willing to threaten dissolution in order to obtain immediate payment. This is not the default rule under RULLCA.

G. Article 7: Dissolution and Winding Up

Article 7 of RULLCA governs dissolution and winding up of an LLC. The events causing dissolution are listed in the first section of this article and are quite conventional, generally mirroring the rules of the existing Arkansas LLC Act rather closely. Under both statutes, dissolution happens upon the occurrence of an event or of circumstances as stated in the operating agreement, the consent of all members, or the passage of a ninetieth day period in which the LLC has no members. In addition, under both statutes a court may order dissolution, although the grounds are more extensive under RULLCA. RULLCA authorizes judicial dissolution if the company’s business becomes unlawful, if it is not practicable to carry on the business, or if members or managers are acting illegally, fraudulently, or oppressively. The Arkansas LLC Act allows judicial dissolution only if it can be shown that it is not reasonably practicable to carry on the LLC’s business as provided in the operating agreement. RULLCA also specifies that a court from which judicial dissolution is sought may choose other remedies.

The next three sections of RULCA deal with winding up of the business upon dissolution and how to handle claims against a dissolving LLC.235 RULCA continues reliance upon the traditional partnership terminology that differentiates between dissolution and termination. Dissolution of an LLC initiates the winding up process, and only when that is complete does the LLC terminate; an LLC in dissolution, however, continues only for the purposes of winding up.236 The winding up process under RULCA is described in some detail237 and is generally similar to practices under the current Arkansas LLC Act.238 Winding up involves the discharge of the company’s debts and liability, settling and closing activities, and distributing assets.239 A statement of dissolution is permitted,240 and if filed, it triggers the same kinds of limitations on claims against the LLC that have long applied in the corporate context.241 RULCA also permits a statement of termination, which is not used in the existing Arkansas process, and clears up questions that might arise if the LLC dissolves when there are no members remaining.242

RULCA also addresses administrative dissolution, reinstatement following such dissolution, and appeal from a denial of administrative reinstatement.243 Although these provisions are not found in the existing Arkansas LLC Act, the provisions mirror those in the Arkansas Business Corporation Act.244

The final section of Article 7 deals with distribution of assets in the winding up process.245 The rules here are conventional, and as is the case in broad equitable powers when judicial dissolution is ordered. See generally, In re Fauth Oil and Gas, Inc., 871 So. 2d 476 (La. Ct. App. 3rd Cir. 2004); Scott v. Trans-System, Inc., 148 Wash. 2d 701, 64 P.3d 1 (2003); Woodward v. Anderson, 261 Neb. 980, 627 N.W.2d 742 (2001); State ex rel. Haislum v. Family Life Services, Inc., 2000 ND 166, 616 N.W.2d 826 (2000); and Rozwicki v. Hunt Printing Co., 21 N.W.3d 87 (Mo. Ct. App. E.D. 2000).

371. RULCA, supra note 4, § 702.
372. Id. §§ 704 to 708.
373. Id. § 702(b), using language similar to that which appears in the existing Arkansas LLC statute in Ark. Code Ann. § 4-32-901.
374. Id. § 702(b).
376. RULCA, supra note 4, § 702(a)(4).
378. RULCA relies on a very short period of limitations for known claims against an LLC that has filed a statement of dissolution (RULCA § 704), and a longer period for other claims to be filed (RULCA § 704). This has long been the approach taken for corporations to file for dissolution (Ark. Code Ann. § 4-27-1467), and is also the approach taken by the existing Arkansas LLC Act (Ark. Code Ann. § 4-32-917-918).
379. RULCA, supra note 4, § 702(b)(4)(C).
380. Id. § 702(b)-(c). This is not addressed in the existing Arkansas LLC Act.
381. Id. § 705-707.
383. RULCA, supra note 4, § 708.

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under existing Arkansas law, an LLC’s assets must be used first to pay creditors (including members who are creditors) and then to pay members.236 The requirement that creditors must be paid first is not subject to contrary agreement in the operating agreement, although the creditors may agree to different payment arrangements.237 Any excess is then returned to the members as per their agreement, or in the absence of an agreement, payment is made first to return the value of contributions and then any remainder is shared equally.238 This matches the default rule under the existing Arkansas LLC Act.239 RULCA also specifies that all distributions are to be paid in money,240 a requirement that is implicit under the Arkansas LLC Act’s winding up provisions.241

H. Article 8: Foreign LLCs

Article 8 of RULCA governs foreign limited liability companies242 and for the most part is quite similar to existing Arkansas law. As is currently the case, under RULCA the law of the state of formation governs the internal affairs of the LLC and the liability of members and managers as such for debts of the business.243 RULCA is a little more complete in its treatment of foreign LLCs, specifying not only that the fact that the foreign jurisdiction has different rules shall not be grounds for denying a certificate of authority, but also that such a certificate does not authorize a foreign LLC to engage in any business not permitted to LLCs in that state.244

Under RULCA, a foreign LLC wishing to transact business must apply for a certificate of authority,245 current Arkansas law additionally requires registration.246 Both statutes include a relatively extensive list of activities that will not constitute doing business in this state for the purposes of

384. Id. § 708(c)(3).
385. Id. § 110(c)(1) provides that the operating agreement may not restrict the rights of persons other than members or managers.
386. Id. § 708(c).
389. RULCA, supra note 4, §§ 804-809.
391. RULCA, supra note 4, § 801(b) & (c).
392. Id. § 802.
requiring a foreign LLC to register here. Both statutes also cover the filing process for applying for a certificate of authority and what happens if the name of the foreign LLC does not comply with the requirements in this state. Both statutes provide for the cancellation of a certificate of authority, but RULLCA is more specific in allowing the Secretary of State to revoke certificates of authority under specified circumstances. Both statutes specify that failure of a foreign LLC to properly register limits the LLC's ability to bring legal actions in this state, but that failure does not impair the validity of contracts entered into or prevent the LLC from defending actions brought here. A foreign LLC that has not registered appoints the Secretary of State as agent for service of process under both acts.

One difference is that RULLCA permits the state attorney general to enjoin foreign LLCs from transacting business without registration, whereas the existing Arkansas LLC Act imposes civil penalties for improperly transacting business here. As there are no reported cases indicating that the Arkansas Attorney General has ever invoked this provision, the significance of this distinction might be minimal.

I. Article 9: Direct and Derivative Actions

Article 9 of RULLCA deals with the right of members to bring direct and derivative actions, and in general it is a topic that the current Arkansas LLC Act fails to address. This does not mean that the provisions of this article will be unfamiliar to Arkansas, as the rules approximate those applicable in the corporate context in which shareholders have rights to bring direct and derivative claims. They are not, however, identical to the corporate rules, and significant differences will be highlighted.

399. RULLCA, supra note 4, ¶ 808. These circumstances would include things like failure to pay fees or taxes, failure to deliver required reports, and failure to maintain an agent for service of process.
402. RULLCA, supra note 4, ¶ 800.
404. RULCA, supra note 4, §§ 901-906.
Article 10: Merger, Conversion, and Domestication

Article 10 of the Revised Uniform LLC Act (the "Act") generally covers topics addressed in Subchapter 12 of the Arkansas LLC Act, as well as combinations not specifically dealt with in the current Arkansas statute. The Act brings together in one place definitions applicable to mergers, consolidations, and conversions, a drafting choice that may make the following provisions somewhat easier to follow for those unfamiliar with corporate reorganizations.

The next few sections in this article (following the definitions provision) deal with mergers. There are provisions specifying when mergers may happen, the required contents of a plan of merger, how such a plan is to be approved, what must be filed and when the merger becomes effective, and the legal effect of the merger. Mergers and consolidations are also provided for in the current Arkansas LLC Act, and the rules that exist now are very similar to those that appear in the Revised Uniform LLC Act. The Act, however, also includes similar provisions for conversions of LLCs and for domestication of foreign LLCs. Spilling out the separate procedures for these types of reorganizations should make it easier for businesses to maintain an optimal organizational form.

There are two additional provisions at the end of this article of the Act. One grants voting rights to any member who would have personal liability as a result of the reorganization and further requires that all members must consent unless the operating agreement provides for approval of such reorganizations with consent of fewer than all members. The last provision notes that this article is not exclusive and is not to "proclaim an entity from being merged, converted, or domesticated" under other applicable laws.

K. Article 11: Miscellaneous Topics

The final article in the Revised Uniform LLC Act covers miscellaneous topics not addressed elsewhere in the Act. It includes a provision on uniformity of application and construction that also shows up in various other uniform acts adopted in Arkansas, but it has not been used in any other business statutes in this jurisdiction. Whether Arkansas would wish to promote uniformity of interpretation over state interests in the realm of business organizations is something that might be the subject of some debate.

There is a provision in the Revised Uniform LLC Act that electronic signatures are designed to make sure that the statute coordinates with existing federal statutes. Although this language does not appear in the current LLC or other business organizations statutes, it is part of the Revised Uniform Commercial Code and various other uniform acts adopted in Arkansas. There is a savings clause, which makes it clear that the Act does not affect pending actions or proceedings, or rights that accrued prior to the Revised Uniform LLC Act's effective date. There is a section providing for a phase-in period, up to the states to choose, with the recommendation that a period of at least one year be chosen in which Revised Uniform LLC Act applies only to new companies and pre-existing companies that elect to be subject to its provisions, and thereafter to all LLCs.

415. Id. §§ 1001-1015.
417. RULCA, supra note 4, § 1001.
418. Id. §§ 1002-1005.
419. Id. § 1002(c).
420. Id. § 1002(d).
421. Id. § 1003.
422. Id. § 1004.
423. RULCA, supra note 4, § 1005.
425. RULCA, supra note 4, §§ 1006-1009 (with provisions governing when conversions may happen, the required contents of a plan of conversion, how such a plan is to be approved, what must be filed and when the conversion becomes effective, and the legal effect of the conversion).
426. Id. §§ 4-32-1018-1011. The same topics that are covered in mergers and conversions are also addressed specifically to domestications.
427. Id. § 1014.
IV. COMPARATIVE ADVANTAGES TO RULLCA OVER THE ARKANSAS LLC ACT

The careful reader has probably gained a fairly good idea of how RULLCA compares to the existing Arkansas LLC Act. The following sections will recap the major advantages of the uniform act.

A. The Advantage of Uniformity Between Jurisdictions

As interstate business transactions become ever more prevalent, the advantages of consistency and uniformity in state business laws becomes ever more important. Although ULLCA was not as successful as might have been hoped, and although every state already has its own LLC statute, RULLCA is an up-to-date modern statute likely to receive relatively widespread acceptance. In general, it builds upon the majority rules that have developed in the past few years, and it represents the best thinking of experts in the field as to where LLC law currently stands and where as a matter of good practice it should go in the future.

B. A Statute that Has Been Drafted with Recent Developments in Mind

As previously noted, RULLCA was drafted after the changes in federal tax rules that necessitated piecemeal amendments to many existing LLC statutes, including the initial ULLCA and the Arkansas LLC Act. In addition, it was drafted after the promulgation of RUPA and re-RUPA by NCCUSL, after the adoption of both of these statutes in Arkansas, and after the recent advent of series LLCs in some jurisdictions. These topics were all considered and played a role in the drafting process of this Uniform Act.

C. Consistency with Other Modern Business and Commercial Statutes

Another potential benefit of RULLCA is that it employs terminology and concepts that appear in other modern business and commercial statutes. Thus, the definition of knowledge in RULLCA mirrors that in other com-

438. The reporters for the project were two law professors, Professor Carter G. Bishop (Suffolk University Law School) and Professor Daniel S. Kleinberger (William Mitchell College of Law) who have extensive experience and publications in agency law, closely held businesses, and tax law. Also on the drafting committee were other nationally known academicians, practitioners, and judges. The American Bar Association Advisor, Robert Kentings, is also very widely published on a variety of topics relating to LLCs. The ABA Section Advisory Council included attorneys from the Business Law, Real Property, Probate and Trust Law, and Tax Law sections.

439. See supra note 140.
Arkansas rule, there is no presumptive right to be paid off in the event of withdrawal, a default rule which is likely to be advantageous for most small businesses.

G. A Remedy for Oppressive Conduct

A seventh relative advantage to RULLCA is that it provides participants with a remedy for oppressive conduct. Completely missing from the Arkansas LLC Act, this provision is likely to minimize abuses of power and authority while providing a fairer arrangement for persons who do not carefully include remedies in their operating agreement for potential disputes.

H. Provision for Derivative Claims

RULLCA also establishes clear rules for derivative proceedings. While presumably less necessary in member-managed LLCs than in traditional closely held corporations, the right of members to seek redress for harm to their companies is potentially valuable (especially in manager-managed companies) and something that the Arkansas LLC Act simply did not cover. RULLCA strikes a balance between the need of members to be able to protect their economic rights and the right of managers to control business operations under ordinary circumstances. By relying on traditional corporate doctrines such as demand, demand falsity, and special litigation corollaries, RULLCA not only sets out rules that balance competing interests, but also uses concepts and procedures that should not be unfamiliar.

I. More Comprehensive Rules Governing Organic Changes

RULLCA also includes more comprehensive rules governing organizational changes such as mergers, which are addressed in the Arkansas LLC Act, but also conversions and domestications, which are not. While not every LLC will benefit from these provisions, they may be very helpful for companies that wish to combine, restructure, or domesticate in Arkansas.

451. Compare RULLCA, supra note 4, § 601 (power to dissociate) & id. § 406(b) (no right to distribution) with Ark. Code Ann. § 4-32-802(c) (LEXIS Repl. 2001) (no power to dissociate) & 802 (power to dissociate).
452. RULLCA, supra note 4, § 701(a)(3)(B).
453. Id. §§ 902–906.
454. Id. §§ 1002–1005.
456. RULLCA, supra note 4, §§ 1006–1013.

J. Simpler Rules on Apparent Authority

ULLCA also uses the choice of not providing for apparent authority of members or managers as a way to simplify the filing requirements and the rules governing who has power to bind. Traditional rules applicable to actual and apparent authority will govern relationships by and among the various parties, including the members, the LLC itself, and third parties. Given the myriad of management structures available to LLCs, this seems a logical choice rather than relying on statutory law to presume authority where none may be intended and reliance may not be justifiable.

K. Miscellaneous Provisions

Finally, there are a number of minor changes that RULLCA would make in Arkansas law which should be advantageous. The ability to pre-file certificates of organization to create shelf LLCs may be advantageous for some businesses. The distinctions between member-managed and manager-managed LLCs in such provisions as those dealing with fiduciary obligations and information rights make sense and should be better default rules in many instances. Although it might be used rarely, the possibility of administrative dissolution under RULLCA is also a comparative advantage. RULLCA’s clear choice to abandon reliance on the concepts of an LLC for a term of particular undertaking might also reduce the risk of confusion, as such terms were never clearly defined in the Arkansas LLC Act.

In fact, scattered throughout the uniform act are minor changes that may make the act slightly easier to use, or less likely to promote confusion or surprise. While many of these provisions may be irrelevant to most LLCs, and of minor significance to even those that are affected, in total, they help to make the uniform act a very desirable innovation that Arkansas should very carefully consider.

V. CONCLUSION

ULLCA offers a number of comparative advantages for Arkansas. The current Arkansas LLC statute contains a number of provisions that were
never fully thought out and that do not mesh well with our other business and commercial statutes. Although the Arkansas legislature has done well in the past few years in amending the Arkansas LLC Act to alleviate the most glaring problems, it is hard to argue with the wisdom of enacting a statute that (1) represents the best thinking of some of the nation’s foremost leaders in the subject, (2) offers the potential benefits of uniformity and consistency, (3) was drafted with recent developments and national trends in mind; and (4) conveys the message that Arkansas is actively seeking to keep its business statutes current and efficient for companies that wish to operate here.