



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

RHODE ISLAND COMMISSION ON UNIFORM STATE LAWS

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February 27, 2026

Rhode Island House Committee on Corporations
State House
82 Smith Street
Providence, RI 02903

Public Hearing of March 3, 2026

Re: Statement of Patrick Guida and Thomas Hemmendinger to the Rhode Island House Committee on Corporations in Support of H 7477 of 2026 – Enacting the Uniform Limited Liability Company Act in Rhode Island

Dear Chair Solomon, Vice Chair O'Brien, and Members of the Rhode Island House Committee on Corporations,

Thank you for the opportunity to testify in support of House Bill 7477 of 2026, which adopts the Uniform Limited Liability Company Act in Rhode Island. We are Rhode Island legislature-appointed members of the Uniform Law Commission. A copy of the Act, along with supporting materials, can be found on the Uniform Law Commission's website www.uniformlaws.org. We have also submitted these materials to the committee electronically.

The Uniform Law Commission (ULC) is a state-supported organization established in 1892 that provides states with non-partisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC commissioners are practicing lawyers, judges, legislators and legislative staff, and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Commissioners donate thousands of hours of legal work, without compensation, to research, draft, and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The State of Rhode Island has a long and successful history of enacting uniform acts, including the Uniform Commercial Code, Uniform Anatomical Gifts Act, Uniform Transfers to Minors Act, Uniform Trade Secret Act, and the Uniform Electronic Transactions Act, among others. In 2022, the General Assembly enacted updates to the Uniform Partnership Act and Uniform Limited Partnership Act, revisions to the Uniform Law on Notarial Acts, and the Uniform Commercial Real Estate Receivership Act.

We write in support of House Bill 7477, which would enact the Uniform Limited Liability Company Act (ULLCA) in Rhode Island. This bill represents a comprehensive update to the State's existing limited liability company law. ULLCA was first approved by the ULC in 1994, significantly revised in 2006, and further refined in 2011 and 2013 as part of the ULC's effort to harmonize uniform laws governing unincorporated business entities.

Adoption of House Bill 7477 would align Rhode Island's LLC law with that of several other jurisdictions, including Connecticut, New Jersey, Vermont, and Pennsylvania. Rhode Island's current LLC statute, enacted in 1992, is not aligned with any other state's law. As a result, Rhode Island cannot benefit from the body of legal authority and judicial precedent developed in jurisdictions that have adopted ULLCA.

House Bill 7477 is the product of extensive study, negotiation, and drafting by local practitioners in collaboration with the Rhode Island Secretary of State's Office. This group carefully scrutinized ULLCA as drafted by the ULC and made targeted adjustments to ensure the bill is appropriately tailored to Rhode Island. Throughout the drafting process, the committee worked with the ULC to confirm that the legislation remains consistent with the goals and purposes of the uniform act.

While there are similarities between current Rhode Island law and the new ULLCA, the differences represent meaningful improvements that will better align Rhode Island with national best practices. If passed, House Bill 7477 would bring greater clarity, cohesion, and continuity to limited liability company law in Rhode Island.

House Bill 7477 is a carefully crafted and comprehensive update that would provide needed clarity in this complex area of law. We have attached three documents prepared by the ULC to assist the Committee's review. The first provides a summary of the bill, the second outlines the principal reasons for adopting ULLCA, and the third highlights the key similarities and differences between ULLCA and Rhode Island's current LLC statute. Thank you for your time and consideration.

Respectfully submitted,

Patrick A. Guida
Thomas Hemmendinger



THE UNIFORM LIMITED LIABILITY COMPANY ACT (ULLCA) (2006) (LAST AMENDED 2013)

- A Summary -

Since the issuance of Rev. Rule 88-76, the limited liability company (LLC) has become the predominant form for organizing closely held businesses. New LLC formations now far outnumber new corporate formations in almost every state.

The development of the first generation of LLC statutes was both rapid and artificially constrained by now-defunct tax regulations. The statutory changes after the 1996 “check the box” regulations were rapid and in many instances jerry-rigged onto existing structures. The first Uniform Limited Liability Company Act was promulgated in 1996 and essentially represented a first generation statute. ULLCA (1996) was adopted in 12 jurisdictions.

ULLCA was extensively revised in 2006, also known as the Revised Uniform Limited Liability Company Act. ULLCA (2006) is a comprehensive, state-of-the-art, second-generation LLC statute that incorporates the best of existing state LLC statutes and case law development from the past 25 years. The 2011 and 2013 amendments, enacted as part of the Harmonization of Business Entity Acts project, conformed the language in ULLCA (2006) with language of similar provisions in the other uniform unincorporated entity acts and made additional updates and changes. In 2022, Rhode Island enacted the Uniform Partnership Act and the Uniform Limited Partnership Act in anticipation of enacting the Uniform Limited Liability Company Act the following year. Each of these three forms of unincorporated entity acts are intended to complement each other. The third leg of the stool remains missing in Rhode Island. The following is an outline of ULLCA (2006), as amended:

- **Article 1** contains general provisions, including: definitions; sections on a LLC’s duration, purposes, powers, name, and agent for service of process; and three key provisions concerning the role and effect of the operating agreement and the flexibility to structure the management and other *inter se* rights and obligations of the members and managers in a manner that fits the needs of the specific LLC.
- **Article 2** provides for the formation of limited liability companies and for the public filing of records pertaining to an LLC.
- **Article 3** governs the relations of members and managers to third parties – i.e. with non-members dealing with or affected by the limited liability company.
- **Article 4** states the default rules for the members’ relationship *inter se* and with the limited liability company and provides templates for member-management and manager-management.
- **Article 5** implements the “pick your partner” principle, which is at the core of the law of unincorporated business organizations, and delimits the rights of transferees of members’

distribution of interests and creditors of members seeking to enforce or foreclosure on a charging order.

- **Article 6** states the causes and consequences of a person's dissociation as a member of a limited liability company.
- **Article 7** delineates the causes and consequences of the dissolution of a limited liability company.
- **Article 8** provides for direct and derivative claims by members and for the establishment, conduct, and judicial review of special litigation committees.
- **Article 9** governs foreign limited liability companies.
- **Article 10** governs organic reorganizations – mergers, interest exchanges, conversions, and domestications.
- **Article 11** contains miscellaneous provisions, including a section providing transition rules for pre-existing limited liability companies.

ULLCA (2006) (Last Amended 2013) is Article 5 of the Uniform Business Organizations Code.

For more information on ULLCA, please contact Sarah Cannon at (312) 450-6623 or by email at scannon@uniformlaws.org.



**WHY RHODE ISLAND SHOULD ADOPT THE
UNIFORM LIMITED LIABILITY COMPANY ACT (ULLCA) (2006)
(LAST AMENDED 2013)**

Limited liability companies (LLCs) are a relatively new form of unincorporated business organization that provide corporate-style limited liability to its owners. LLCs began to be widely used in the late 1980s after upholding LLC taxation as partnerships (Revenue Ruling 88-76). Every state has enacted some sort of LLC legislation; and LLC filings in almost all states far outnumber the number of new corporate filings on an annual basis. The existing state LLC statutes, however, are far from uniform; many have been amended on a patchwork basis and have not kept up with the LLC cases and other legal developments.

The Uniform Law Commission (ULC) promulgated the original Uniform Limited Liability Company Act in 1994 and amended it in 1996 to take into account the then newly adopted federal tax “check-the-box” regulations. ULLCA (1996), like most existing state LLC statutes, is classified as a “first generation” statute. In 2006 the Act was revised extensively. ULLCA (2006) also known as the Revised Uniform Limited Liability Company Act, is a comprehensive, fully integrated “second generation” LLC statute that takes into account the best elements of the “first generation” LLC statutes and two decades of legal developments in the field. The 2011 and 2013 amendments, enacted as part of the Harmonization of Business Entity Acts project, updated and harmonized the language in the provisions that are the same as provisions in the other uniform unincorporated entity acts, and made additional harmonization changes. Rhode Island enacted its limited liability company statute in 1992. While there are many similarities between existing Rhode Island laws and the new ULLCA, the differences in the ULLCA constitute important improvements which will better align Rhode Island law with best practices in the country. The list below describes some of the more significant changes and innovations in ULLCA (2006), as amended:

- **The operating agreement.** The operating agreement, rather than the certificate of organization, determines whether an LLC is member-managed or manager-managed. The act also makes it clear that the operating agreement is binding on the LLC even in the case of a single member LLC and even if the LLC has taken no formal action to adopt the operating agreement.
- **LLCs may engage in any lawful purpose.** An LLC is not restricted to for-profit business activities. It can have “any lawful purpose, regardless of whether for profit.” This expands the availability of LLCs to activities that are not traditional businesses, such as ownership of a family vacation home and, subject to other federal and state laws, allow an organization whose activities might be classified as non-profit to select an LLC as its form of entity.

- **Internal affairs default rules.** The act contains a basic set of internal affairs default rules governing the relationship of members and managers of an LLC between themselves and each other, most of which can be varied by the operating agreement. For example, if the operating agreement is silent on the type of management structure, an LLC is member-managed by default. There are also default rules for decisions by members and managers and for other matters.
- **Flexible management structure.** It is possible to have any type of management structure the LLC members want, including a corporate-style board of directors and officers. The management structure is set forth in the operating agreement.
- **Duties of managers and members.** The act specifies the fiduciary duty of loyalty and the duty of care for managers and clarifies the contractual status of the duty of good faith and fair dealing. These and other duties may be restricted or eliminated “if not manifestly unreasonable.” The operating agreement may limit or eliminate liability of a manager to the LLC or other members for monetary damages except for breaches of the duty of loyalty, liability for improper distributions, or conduct involving bad faith, willful or intentional conduct, or knowing violation of law, limitations that are similar to those found in state corporation statutes.
- **Agency authority.** The authority of members and managers to bind an LLC is determined by agency law and not by status as a member of a member-managed LLC or a manager of manager-managed LLC, as is the case under most existing LLC statutes. Statements of authority may be filed in the office of the Secretary of State (or the equivalent state office for filing entities) and in the case of real estate, in the office where real estate records are kept to provide notice that only certain members or managers have authority to conduct business on behalf of the LLC.
- **Charging orders.** The act clarifies and simplifies the rules governing charging orders, the exclusive remedy for a creditor of a member to obtain a member's financial rights to distributions from the LLC. The act also provides the rules for foreclosing on a charging order and makes it absolutely clear that, except in the case of a single member LLC, a purchaser of a foreclosed interest only obtains the financial rights to distributions to the member and does not become a member of the LLC by virtue of the foreclosure or have any rights to participate or interfere with the management of the LLC or to demand inspection of the LLC's documents or records.
- **Distributions.** The act specifies the circumstances under which distributions from an LLC can and cannot be made and contains provisions for recovery of improper distributions. The act also makes it clear that payment for reasonable compensation and for retirement plans or other benefits programs are not distributions.
- **A remedy for oppressive conduct.** Reflecting case law developments around the country, the act permits a member to seek a court order “dissolving the company on the grounds that the managers or those members in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.”

- **Direct and derivative claims, special litigation committees.** Under the act, a member can bring a direct action for injuries to that member and can bring a derivative action to enforce a claim of an LLC. If a derivative action is filed, the LLC may form a special litigation committee to investigate the asserted claims. This stays the litigation while the committee does its investigation. The objective of the investigation is to determine if the litigation has merit and is for the good of the company.
- **Reorganization transactions.** The act has comprehensive provisions authorizing LLCs to merge, have interest exchanges or convert into another type of entity and also authorizes other types of entities to merge, have interest exchanges with and convert into an LLC. In addition, the act authorizes an LLC to domesticate in another state and also authorizes a foreign LLC to domesticate in the enacting state.

This act represents a significant advancement in LLC law. Some of the benefits of enacting the uniform act include reduced compliance costs, streamlined administration (which reduces costs to states) and consistency across jurisdictions.

ULLCA (2006) (Last Amended in 2013) is Article 5 of the Uniform Business Organizations Code.

For more information on ULLCA, please contact Sarah Cannon at (312) 450-6623 or by email at scannon@uniformlaws.org.



Key Similarities and Changes Between ULLCA (2006)(Harmonized 2013) as Adopted by House Bill 7477 of 2026 and the Rhode Island Limited Liability Company Act

The Uniform Limited Liability Company Act (ULLCA), as adopted by House Bill 7477 of 2026, and Rhode Island's current Limited Liability Company Act are similar in most fundamental concepts and overall statutory architecture. However, the acts differ with regard to governance duties, the agency power of members, definitions of membership, allocation of distributions, finances, and creditor's rights. Enacting House Bill 7477 would clarify Rhode Island's current limited liability company law and fill gaps that have been identified in practice and through litigation. Adopting House Bill 7477 would also facilitate transactional planning by attorneys and businesses and provide much more explicit direction for courts in interpreting and applying limited liability company operating agreements.

Operating Agreement

ULLCA centralizes key provisions regarding the operating agreement and specifically states the operating agreement's relationship to the statutory rules. Sections 7-16.1-105 to 7-16.1-107¹ of H 7477 contain three key provisions dealing with the operating agreement concerning: the scope, functions, and limitations of the operating agreement; the effect of the operating agreement on the LLC and its members; and the effect of the key provisions of the operating agreement on third parties and its relationship to records. Rhode Island's current LLC law scatters provisions relating to the operating agreement throughout the statute. ULLCA specifies that default rules in the act will govern matters not addressed by the operating agreement whereas Rhode Island's current statute does not contain any specific language regarding an operating agreement's relationship to the statutory default rules. H 7477, § 7-16.1-105(b). Rhode Island's current law also requires an affirmative vote of members entitled to vote, representing a majority of the capital values of all membership interests that have not been assigned, to amend the operating agreement. R.I. GEN. LAWS § 7-16-21. ULLCA requires the unanimous consent of members to amend the operating agreement for a member-managed LLC and a manager-managed LLC. H 7477, §§ 7-16.1-407(b)(4)(B) & (c)(3)(B).

ULLCA provides that the operating agreement may permit non-members, like lenders or non-member managers, to have veto rights over amendments to the operating agreement. *Id.* § 7-16.1-107(a). It also provides that a disassociated member's and transferee's rights are subject to changes in the operating agreement that occur after the transfer, provided the changes do not impose a new liability on the dissociated member or transferee. *Id.* § 107(b). Under ULLCA, an LLC is bound by the operating agreement even if it has not manifested assent to the operating agreement. *Id.* § 106(a). Rhode Island's current LLC law is silent on these matters.

Finally, both Rhode Island's current law and ULLCA expressly authorize sole member LLCs in the operating agreements and permit oral or written operating agreements. *Compare H*

¹ Rhode Island's Current LLC law is codified at §§ 7-16-1 to 7-16-76. H 7477 would add a new chapter 16.1 to Title 7 and the citations reflect the addition as proposed by the new language. For example, § 7-16.1-103(13) reflects the definition of "operating agreement" as contained in the draft, whereas § 7-16-23 is that same definition in the current law.

7477, § 7-16.1-102(13), *with* R.I. GEN. LAWS 7-16-2(23).

Governance Structure

As far as the governance structure and consent requirements for voting are concerned, ULLCA and Rhode Island's LLC law are similar. Both contain management "templates." Section 407 of H 7477 provides default rules for two types of management structure: member-managed and manager-managed. § 7-16.1-407. Current Rhode Island law also provides that, unless the articles of organization or a written operating agreement provide for management by or under the authority of managers, the LLC shall be managed by the members. R.I. GEN. LAWS § 7-16-14. Both ULLCA and current Rhode Island Law specify that default rules are subject to the operating agreement. *Compare* H 7477, §§ 7-16.1-407(b)–(c), *with* R.I. GEN. LAWS § 7-16-15.

Under ULLCA, default rules for voting are listed in Section 407. A majority consent of members or managers is required for undertaking matters within the ordinary course of business; however, unanimous consent of members is required for undertaking matters outside ordinary course of business and to amend the operating agreement. H 7477, §§ 7-16.1-407(b)(3)–(4), (c)(1)(3). Rhode Island's current law also requires unanimous consent of members to terminate a member's obligation to make a capital contribution, interim distribution, and grant membership status to an assignee of an interest in the LLC. R.I. GEN. LAWS §§ 7-16-25(d), -28, & -36.

Governance Duties

Current Rhode Island Law and ULLCA differ in regard to governance duties. Under ULLCA, members in a member-managed LLC and managers in a manager-managed LLC owe to LLC and the members a duty of care to refrain from grossly negligent or reckless conduct, intentional misconduct, and knowing violation of law. H 7477, §§ 7-16.1-409(c), (i)(1). Under Rhode Island's current law, the manager must act "with the care that an ordinarily prudent person in a similar position would use under the circumstances, and in the manner the manager reasonably believes to be in the best interests of the limited liability company." R.I. GEN. LAWS §§ 7-16-17(a) to -18(b)(2). ULLCA does not permit an LLC to eliminate the contractual duty of good faith and fair dealing of members. Currently, Rhode Island does not have a limitation for the personal liability for a member or manager whose acts or omissions are not in good faith, or which involve intentional misconduct or a knowing violation of the law. *Compare* H 7477, §§ 7-16.1-409(d), (i)(3), *with* R.I. GEN. LAWS § 7-16-17. ULLCA permits an operating agreement to limit or eliminate aspects of the duties of loyalty, care, and good faith and fair dealing "if not manifestly unreasonable." H 7477, § 7-16.1-105(c)(6), (d)(3). It also gives an operating agreement the power to limit or eliminate liability for breach of fiduciary duties except for conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law. *Id.* § 7-16.1-105(c)(7). Rhode Island's LLC law allows the articles of organization or operating agreement to eliminate or limit the personal liability of a manager to the LLC or its members for monetary damages for breach of any duty, but the organizational documents *cannot* eliminate or limit liability for: breach of manager's duty of loyalty; acts or omissions not in good faith; wrongful distributions; and transactions from which the manager received an improper benefit. R.I. GEN. LAWS § 7-16-18.

Agency Power of Members

Rhode Island's LLC law and H 7477 also differ in sections regarding the agency power of members. Section 301 of H 7477 specifies that a member is not an agent of the LLC solely by being a member and the authority of a member or managers to bind an LLC is determined by other law (particularly agency law). § 7-16.1-301. The current statute in Rhode Island uses a statutory apparent authority scheme and does not contain specific provisions relating to a statement of authority or statement of denial. R.I. GEN. LAWS § 7-16-20.

Membership

ULLCA differs from current law in its definition of "member." Subsection 11 of Section 102 defines member as "a person who has become a member of the LLC or was a member when the company became subject to the act and has not dissociated." H 7477, § 7-16.1-102(13). Rhode Island currently defines member as "a person with an ownership interest in a limited liability company with the rights and obligations specified under this chapter." R.I. GEN. LAWS § 7-16-2(20). However, as mentioned above, both permit a limited liability company to have only one member upon formation and members must unanimously consent to granting assignee membership status. *Compare* H 7477, § 7-16.1-401, *with* R.I. GEN. LAWS §§ 7-16-5, -36.

Finances

Rhode Island's current law and ULLCA differ in their provisions concerning the allocation of distributions, and express provisions for capital accounts and profits and loss allocations. Both contain similar provisions for limitations on distributions, liability for contributions, liability for improper distributions, and the right to transfer a member's financial interest. The current default rule in Rhode Island is that distributions and losses are allocated to each member based on the member's capital value. R.I. GEN. LAWS § 7-16-26, -27. ULLCA's default rule is that distributions before dissolution must be in equal shares among members and dissociated members, except to comply with transferee obligations and charging orders. H 7477, § 7-16.1-404. ULLCA follows both the Revised Uniform Partnership Act (RUPA) (1997) (Last Amended 2013) and the Uniform Limited Partnership Act (ULPA) (2001) (Last Amended 2013), which Rhode Island enacted in 2022, by omitting the default rule for allocation of losses. Under ULLCA, distribution rules are sufficient to determine tax allocation of losses.

Both Rhode Island's current law and ULLCA provide that distributions will not be allowed if the company would be unable to pay its debts or if the total assets would be less than the total liabilities and any additional amount needed to satisfy preferential rights. *Compare* H 7477, § 7-16.1-405, *with* R.I. GEN. LAWS § 7-16-31. Liability for contributions is not excused for death, disability, or other inability to perform. *Compare* H 7477, § 7-16.1-403, *with* R.I. GEN. LAWS § 7-16-25. ULLCA does not change the limitations on distributions that are in current Rhode Island Law: (1) not able to pay the debts as they become due in the ordinary course of business; or (2) total assets less than total liabilities. *See* H 7477, § 7-16.1-405. Members and managers who consent to an improper distribution may still be personally liable and liability still exists to return the excess distributions by recipients who knew the distribution was improper. *Id.* § 7-16.1-406. Finally, both Rhode Island's current law and ULLCA contain similar language reflecting the right of a member to transfer their financial interest in the LLC and protect the "pick-your-partner"

principle. *Compare id.* § 7-16.1-502, with R.I. GEN. LAWS § 7-16-35.

Dissociation and Dissolution

ULLCA expands on the sections of current Rhode Island law dealing with dissociation and its effects. Rhode Island's current LLC act does not have specific provisions about dissociation and the effect of this dissociation. Under ULLCA, the default rule gives a member the power to dissociate; but if the dissociation is wrongful the member is liable for damages and for any unpaid contributions or other debts owed to the LLC. H 7477, § 7-16.1-601. Section 602 sets forth the causes of disassociation. Once a member has dissociated, the member's right to participate in the management and conduct of the business terminates. *Id.* § 603. The former member is a mere transferee and has only the right to receive distributions. *Id.* The dissociation does not trigger any distributions; but the former member does receive a proportionate share of future distributions. *Id.*

Both Rhode Island's current law and ULLCA provide for dissolution of an LLC. Sections 39 to 45 of Rhode Island's statutes list the causes of dissolution, permit judicial dissolution, address winding up, and authorize administrative dissolution by the Secretary of State. R.I. GEN. LAWS § 7-16-39 to -45. H 7477 allows for the right of reinstatement within twenty years if the deficiencies are cured. § 7-16.1-710. Current law is also silent as to court-ordered dissociation of a member. Though both laws address court-ordered dissolution, ULLCA's provisions are more expansive. *Compare* H 7477, § 7-16.1-701(4), with R.I. GEN. LAWS § 7-16-40. Lastly, ULLCA expressly authorizes both direct and derivative lawsuits where the Rhode Island statute contains no express authorization for direct lawsuits. *Compare* H 7477, § 7-16.1-801, with R.I. GEN. LAWS § 7-16-56.

Creditors' Rights Against Members and Charging Orders

ULLCA expressly states that charging orders are the exclusive remedy for a judgment creditor of a member or transferee to obtain a member or transferee's financial rights to distributions in Subsection (h) of Section 503. This Section also makes it clear that a secured creditor will retain all remedies available under Article 9 of the Uniform Commercial Code. While Rhode Island's current law does permit charging orders for judgment creditors of members, it does not contain specific sections regarding whether charging orders are the exclusive remedy, the authorization of foreclosure sales, the effect of a foreclosure sale, and any redemption rights available to a member or LLC.

Reorganization (Domestication, Merger, Interest Exchange, Conversion)

ULLCA offers more extensive provisions concerning reorganization transactions than current Rhode Island law. Section 7-16-59 of current law provides that domestic or foreign LLC may merge or consolidate with or into one or more domestic or foreign LLCs, LPs, or corporations. R.I. GEN. LAWS § 7-16-59 It also permits one or more LPs or corporations to merge/consolidate with or into any domestic or foreign LLCs. *Id.* Rhode Island only requires a majority vote, not unanimous consent like ULLCA, to approve a reorganization. *Compare id.* § 7-16-21(b), with H 7477, §§ 7-16.1-407(b)(4)(A), (c)(3)(A). Finally, though ULLCA does not contain an express provision concerning appraisal rights, Section 1007 preserves appraisal rights authorized by other law for other entities that are parties to transaction and also authorizes enforcement of contractual

appraisal rights in an LLC's operating agreement or the plan of merger, domestication, conversion, or interest exchange.

LLC Comparison Chart

Limited Liability Company Act (2006)(Harmonized 2013) v. Rhode Island Liability Company Act,

§§ 7-16-1 to -76

Language highlighted in **green = same**, Language highlighted in **yellow = similar**, Language highlighted in **red = different**

FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
OPERATING AGREEMENT		
Mechanics		
Centralization of key provisions in operating agreement	Centralization - §§ 105 - 107 Contain three key provisions dealing with the operating agreement: § 105 – scope, function & limitations; § 106 – effect on LLC and its members; and § 107 – effect on third parties and relationship to records.	No – There are provisions related to the operating agreement scattered throughout the statute.
Specific statement of operating agreement’s relationship to the statutory rules?	Yes - § 105(b) –“Default rules” in the Act govern matters not addressed by the operating agreement.	No – The statute does not contain a specific statement regarding operating agreement’s relationship to the statutory default rules.
Express authorization of operating agreement in SMLLCs?	Yes - § 102(13) – Definition states it is an agreement among all the members, including a sole member.	Yes - § 7-16-2(23) – definition states it is an agreement of the members, including a sole member
Oral v. written	Either - § 102(13) – Broad definition that states regardless of its name, the operating agreement is an agreement among all the members, whether oral, implied, or in a record.	Either - § 7-16-2(23)
Amendment	Yes – Unanimous consent of members required to amend operating agreement under 407(b)(4)(B) [member-managed] and 407(c)(3)(B) [manager-managed].	§ 7-16-21 – An affirmative vote of members entitled to vote, representing a majority of the capital values of all membership interests that have not been assigned
Power to grant rights to third parties	Yes - § 107(a) – Operating agreement may permit non-members to have veto rights over amendments to the operating agreement (e.g. lenders, non-member managers).	Unclear – The statute is silent.
Binding on dissociated members and transferees	Yes - § 107(b) – Provides that dissociated member and transferee rights are subject to changes in the operating agreement that occur after the transfer, provided the changes do not impose a new liability on the dissociated member or transferee.	Unclear – The statute is silent.
Binding on LLC irrespective of LLC being a party	Yes - § 106(a) – LLC is bound by the operating agreement even if it has not manifested assent to the operating agreement	Unclear – The statute is silent.
GOVERNANCE STRUCTURE		
Management “templates”		
<ul style="list-style-type: none"> ▪ Provided 	Yes - § 407 – Provides default rules for two types of management structure: member-managed and manager-managed.	<p>Yes – § 7-16-14: unless the articles of organization or a written operating agreement provide for management by or under the authority of managers, the LLC shall be managed by the members</p> <p>Default rules for members: § 7-16-14 Default rules for managers: §§ 7-16-15 to 7-16-20</p>
<ul style="list-style-type: none"> ▪ Required 	No - § 407(b) & (c) - Default rules are subject to the operating agreement under § 105 (see comments to § 407).	No - § 7-16-15 – Default rules are subject to the articles of organization or a written operating agreement.

LLC Comparison Chart

Limited Liability Company Act (2006)(Harmonized 2013) v. Rhode Island Liability Company Act,

§§ 7-16-1 to -76

Language highlighted in **green = same**, Language highlighted in **yellow = similar**, Language highlighted in **red = different**

FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Voting/consent	<p>§ 407 - provides centralized list of matters requiring member consent for member-managed and manager-managed LLCs. Default rules are: Majority consent of members or managers required for matters within the ordinary course of business; unanimous consent of members required for matters outside ordinary course of business and to amend the operating agreement. See § 407(b)(3)-(4); § 407(c)(1),(3); § 1023(a); § 1033(a); § 1043(a); § 1053(a) (default rule is unanimous consent for mergers, interest exchanges, conversions and domestications).</p>	<p>§ 7-16-19 – Provides that managers shall act by majority vote for a manager-managed LLC.</p> <p>§ 7-16-21 – Provides list of matters requiring members’ affirmative votes.</p> <p>Unanimous consent of members is required to 1) terminate a member’s obligation to make a capital contribution; 2) make an interim distribution; and 3) grant membership status to an assignee of an interest in the LLC. (See §§ 7-16-25(d), 7-16-28, 7-16-36.)</p>
GOVERNANCE DUTIES		
Definition and structure		
<ul style="list-style-type: none"> ▪ Loyalty 	<p>§ 409(b) & (i)(1) – Members in a member managed LLC and managers in a manager managed LLC owe to the <i>LLC and members</i> fiduciary duty of loyalty: account for LLC property, refrain from self-dealing and competition and appropriation of a company opportunity.</p>	<p>§§ 7-16-17(e) to 7-16-18(b) – Members in a member-managed LLC and managers in a manager-managed LLC owe the LLC the duty of loyalty: to refrain from self-dealing, account for the LLC, etc.</p>
<ul style="list-style-type: none"> ▪ Care 	<p>§ 409(c) & (i)(1) – Members in a member managed LLC and Managers in a manager managed LLC owe to LLC and the members a duty of care: refrain from grossly negligent or reckless conduct, intentional misconduct, and knowing violation of law.</p>	<p>§§ 7-16-17(a) to 7-16-18(b)(2) – The manager must act “with the care that an ordinarily prudent person in a similar position would use under the circumstances, and in the manner the manager reasonably believes to be in the best interests of the limited liability company.”</p>
<ul style="list-style-type: none"> ▪ Contractual duty of good faith and fair dealing 	<p>§ 409(d) & (i)(3) – Members and managers shall discharge duties and obligations consistently with the contractual obligation of good faith and fair dealing. This duty cannot be eliminated; but the operating agreement may prescribe the standards by which performance is to be measured, if not manifestly unreasonable.</p>	<p>§ 7-16-17 – Members and managers must act in good faith. There is no limiting the personal liability for a member or manager whose acts or omissions are not in good faith or which involve intentional misconduct or a knowing violation of the law.</p>
Operating agreement power to limit, eliminate loyalty, care and good faith and fair dealing	<p>§ 105(c)(6), (d)(3) – If not “manifestly unreasonable” [defined in (e)], the operating agreement may:</p> <ol style="list-style-type: none"> (1) restrict or eliminate aspects of the duty of loyalty stated in § 409(b) & (i)(1); (2) alter duty of care except to authorize intentional misconduct or conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law; (3) eliminate or alter other fiduciary duties not codified in the Act; and (4) prescribe standards to measure performance of the obligation of good faith under § 409(d). 	<p>§ 7-16-18 – The articles of organization or operating agreement may eliminate or limit the personal liability of a manager to the LLC or its members for monetary damages for breach of any duty, but cannot eliminate or limit liability for:</p> <ol style="list-style-type: none"> (1) breach of manager’s duty of loyalty; (2) acts or omissions not in good faith; (3) wrongful distributions; and (4) transactions from which the manager received an improper benefit.

LLC Comparison Chart

Limited Liability Company Act (2006)(Harmonized 2013) v. Rhode Island Liability Company Act, §§ 7-16-1 to -76

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FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Operating agreement power to limit or eliminate liability for breach of duties	Yes - § 105(c)(7) – except for conduct involving bad faith, willful or intentional misconduct, a knowing violation of law.	Yes - § 7-16-18 -- The articles of organization or operating agreement may eliminate or limit the personal liability of a manager to the LLC or to its members for monetary damages for breach of duty, but it cannot eliminate or limit the liability of a manager for breach of duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct, etc.
AGENCY POWER OF MEMBERS		
Authority to bind LLC determined by agency law <i>not</i> status	Yes - § 301 Member is not an agent of the LLC solely by being a member; authority of member or managers to bind LLC is determined by other law (especially agency law).	No - § 7-16-20 – Rhode Island uses a statutory apparent authority scheme for its LLC act.
Statement of authority	Permitted – § 302 – Statements of authority pertaining to position may be filed in the Secretary of State’s office (and in the case of real estate in the office where real estate records are kept) to provide notice that only certain members or managers have authority to conduct business on behalf of the LLC.	Unclear – The statute is silent.
Statement of denial	Permitted - § 303 – Operates as a restrictive amendment to a statement of authority.	Unclear – The statute is silent.
MEMBERSHIP		
Definition	§ 102(11) – “Member” is defined as a person who has become a member of the LLC or was a member when the company became subject to the act, and has not dissociated.	§ 7-16-2(20) – “Member” is defined as a person with an ownership interest in a limited liability company with the rights and obligations specified under this chapter.

LLC Comparison Chart

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§§ 7-16-1 to -76

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FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Becoming a member	<p>§ 401 – If the LLC is to have only one member upon formation, that person becomes a member as agreed by the person and company’s organizer. The member may be the organizer.</p> <p>If LLC is to have more than one member upon formation, those persons become members as agreed before the company’s formation. Organizer acts on their behalf and may be one of them.</p> <p>After formation, a person becomes a member in one of four ways: 1) under operating agreement; 2) through an Article 10 transaction; 3) by members’ unanimous vote; or 4) after company has no members for 90 days, transferees entitled to receive a majority of the company’s distributions may consent to adding a new member. <i>See</i> § 701(a)(3)(A).</p> <p>A person may become a member without acquiring a transferable interest or being obligated to contribute.</p> <p>If a transferee becomes a member, the transferee is liable for the member’s contribution obligations and for claw back of improper distributions made to the member. <i>See</i> § 502(h).</p>	<p>§ 7-16-5 – One or more persons may form a LLC and become members by delivering executed articles of organization to the Secretary of State for filing.</p> <p>§ 7-16-36 – The members of the LLC must unanimously consent to granting assignee membership status.</p> <p>§ 7-16-38 – Articles of organization or operating agreement may also state how a person becomes a member of the LLC.</p> <p>There is no single section to describe all the ways in which a person becomes a member; rather, this information is scattered throughout the statute.</p>
FINANCES		
Acceptable forms of contributions	<p>§ 402 – Property, services performed other benefits, or any agreement to provide same.</p>	<p>§ 7-16-2(5) – “capital contribution” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property.</p>
Allocation of distributions	<p>§ 404 – Default rule is that distributions before dissolution must be in equal shares among members and dissociated members, except to comply with transferee obligations and charging orders.</p> <p>§ 405 – No distribution allowed if company would be</p> <ol style="list-style-type: none"> (1) unable to pay debts; or (2) if total assets would be less than total liabilities, plus any amount needed to satisfy preferential rights. 	<p>§ 7-16-27 – Default rule is that distribution shall be allocated to each member based on the member’s capital value.</p> <p>§ 7-16-31 – No distribution is permitted if the LLC would be</p> <ol style="list-style-type: none"> (1) unable to pay debts; or (2) if total assets would be less than total liabilities, plus any amount needed to satisfy preferential rights.
Express provisions for capital accounts and profit and loss allocations	<p>No – ULLCA follows both RUPA (1997) (Last Amended 2013) and ULPA (2001) (Last Amended 2013) by omitting the default rule for allocation of losses. Distribution rules are sufficient to determine tax allocation of losses.</p>	<p>§ 7-16-26 – Allocation of losses is determined based on member’s capital value.</p>

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Liability for contributions	§ 403 – A person’s obligation is not excused by death, disability, or other inability to perform; creditors may enforce this obligation. If a person does not make a required non-cash contribution, the person is obligated at option of the company to contribute money value. An obligation may be compromised by unanimous consent of members.	§ 7-16-25 – A person’s obligation is not excused by death, disability, or other reason; creditors may enforce the obligation. If a person does not make a required non-cash contribution, then the person is obligated at the LLC’s option to contribute the money value of that contribution. An obligation may be compromised only by unanimous consent of members.
Limitations on distributions	§ 405 – Alternative tests (1) not able to pay the debts as they become due in the ordinary course of business; or (2) total assets less than total liabilities.	Same - § 7-16-31 – Test is either (1) unable to pay debts as they become due in the ordinary course of business; or (2) total assets less than total liabilities, plus any amount needed to satisfy preferential rights.
Liability for improper distributions	§ 406 – Two types of liability specified: (1) personal liability of the members/managers who consent to an improper distribution; and (2) liability to return the excess by recipients who knew the distribution was improper. Two year statute of limitations to bring action for recovery of excess.	Same - § 7-16-32 – There is personal liability of members/managers who assent to an improper distribution; contribution to the liable individual(s) from each other member or manager who could have been liable and from each member who received a distribution knowing it was made in violation of the law.
Right to transfer financial interest	Yes - § 502 – Reflects the “pick your partner” principle and delimits the rights of transferees; a member can transfer only his/her financial interest, not management or governance rights. Transfer of certificates evidencing the interest is permitted. A transferee has no right to information except an accounting after dissolution.	Yes - § 7-16-35 – Also uses the “pick your partner” principle to delimit the right of the assignee; a member can transfer his/her financial interest, but not management or governance powers.
DISSOCIATION & DISSOLUTION		
Dissociation	§ 601 – The default rule gives a member the power to dissociate; but if the dissociation is wrongful, the member is liable for damages and is still liable for any unpaid contributions or other debts owed to the LLC. § 602 set forth the causes of disassociation.	Unclear – The statute is silent.
Effect of Dissociation	§ 603 – The member’s right to participate in the management and conduct of the business terminates. The former member is a mere transferee and has only the right to receive distributions. The dissociation does not trigger any distributions; but the former member does receive a proportionate share of future distributions.	Unclear – The statute is silent.

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FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Dissolution	<p>§ 701 – Lists the causes of dissolution, including court ordered dissolution (see below);</p> <p>§§ 702-707 – winding up and disposition of assets.</p> <p>§§ 708-710 – authorizes the Secretary of State to administratively dissolve an LLC for failure:</p> <ol style="list-style-type: none"> (1) to pay taxes or fees owed to the SOS; (2) 6-month delinquency in filing an annual report; or (3) failure to have a registered agent for 60 consecutive days. <p>There is a right of reinstatement within two years if the deficiencies are cured.</p>	<p>§ 7-16-39 – Lists the causes of dissolution</p> <p>§ 7-16-40 – Permits judicial dissolution</p> <p>§ 7-16-45 – winding up</p> <p>§ 7-16-41 – Authorizes Secretary of State to administratively dissolve an LLC for failure to file its annual report, failure to pay taxes or fees owed to the SoS, failure to appoint and maintain a resident agent in the state for 30 days, etc.</p> <p>§ 7-16-43: There is a right of reinstatement within 10 years if deficiencies are cured.</p>
Court Ordered Dissociation (Expulsion)	<p>§ 602(6) – On application by the LLC or a member to expel a member because the member:</p> <ol style="list-style-type: none"> (1) has engaged or is engaging in wrongful conduct that has adversely and materially affected the LLC’s activities; (2) has committed willfully or persistently a material breach of the operating agreement or a duty or obligation under § 409; or (3) has engaged or is engaging in conduct which makes it not reasonably practical to carry on the activities of the LLC with the person as a member. <p>This provision is a default rule that can be varied or eliminated.</p>	<p>Unclear – The statute is silent.</p>
Court Ordered Dissolution	<p>§ 701(4) – On application by a member that:</p> <ol style="list-style-type: none"> (1) the conduct of all or substantially all the LLC’s activities is unlawful; (2) it is not reasonably practicable to carry on the LLC’s activities in conformity with the certificate of organization and the operating agreement; or (3) the managers or those members in control of the LLC have acted, are acting, or will act in a manner that is illegal, or fraudulent or in a manner that is oppressive and was, or will be directly harmful to the applicant. <p>This right cannot be modified or eliminated by the operating agreement. Remedies other than dissolution authorized</p>	<p>§ 7-16-40 – On application by or on behalf of a member, the superior court may decree dissolution of an LLC when it is “not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.”</p>
Express authorization for direct and derivative provisions	<p>Yes to both – Express distinction between direct/derivative lawsuits; § 801 allows a member to bring a direct action for injuries to that member and § 802-06 allows a member to bring a derivative action to enforce the right of an LLC.</p>	<p>No express authorization for direct lawsuits</p> <p>§ 7-16-56 – Provides express authorization for a derivative action to enforce the right of an LLC.</p>

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MANDATED DISCLOSURE OF INFORMATION		
Certificate/articles of organization	<p>§ 201(b) – Certificate of organization must state the LLC’s</p> <ul style="list-style-type: none"> (1) name, (2) address of the company’s principal office, and (3) the name and in-state address of the company’s registered agent. 	<p>§ 7-16-6 – Articles of organization must state:</p> <ul style="list-style-type: none"> (1) LLC’s name; (2) address of company’s principal office; (3) name and address of its resident agent in the state; (4) name and address of a person authorized to sign and who does sign the articles of organization; (5) <i>whether, under the articles of organization and any written operating agreement, the LLC is intended to be treated as a partnership, a corporation, or disregarded as an entity separate from its members for purposes of federal income tax;</i> (6) <i>whether the LLC is member-managed or manager-managed (with name and address of each manager)</i>
Annual reports	<p>§ 212(a) – Annual report must state:</p> <ul style="list-style-type: none"> (1) name of the LLC; (2) name and street and mailing address of its registered agent in this state; (3) street and mailing addresses of its principal office; (4) if the company is member managed, name of at least one member; (5) if company is manager managed, the name of at least one manager; and (6) in the case of a foreign company, its jurisdiction of formation and any alternate name adopted under 906(a). 	<p>§ 7-16-66 – Annual report must state:</p> <ul style="list-style-type: none"> (1) name and address of LLC’s principal office; (2) state or other jurisdiction under the laws of which it is formed; (3) name and address of LLC’s registered agent; (4) mailing address of LLC and name/title of person to whom the mail should be addressed; (5) character of the business in which the LLC is engaged in the state; (6) any additional information required by SoS; (7) name and address of the LLC’s managers.

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Access to records	<p>§ 410 – Separate provision for member-managed and manager-managed LLCs. In a member-managed LLC members may inspect and copy any records maintained by the company that are material to the member’s rights and duties under the operating agreement under the following conditions:</p> <ol style="list-style-type: none"> 1) member gives reasonable notice (response due not later than 10 days after receipt of the demand); 2) member inspects records during office hours; and 3) member inspects records at a reasonable location specified by the company. <p>Without demand, the company must furnish to members any information material to members’ exercise of duties and rights.</p> <p>In a manager-managed LLC, managers have the information rights of members in a member-managed LLC, and members have information rights related to the member’s interest as a member.</p> <p>The LLC has 10 days to accept, reject or limit the requested access.</p> <p>Dissociated members have rights to information relating to the time the former member was a member.</p> <p>A transferee is not entitled to any information rights.</p> <p>Under § 105(c)(8) an operating agreement may impose reasonable restrictions on access and use of information obtained under § 410 and may specify appropriate remedies, including liquidated damages, for breach of any restrictions.</p>	<p>§ 7-16-22 – Requires a LLC to keep the following information on file in its principal office:</p> <ol style="list-style-type: none"> (1) current list of full name and last known address of every member and manager; (2) records that show the capital values and relative voting rights of members; (3) copy of the articles that would enable a member to determine the capital values and the relative voting rights of the members (4) copies of any powers of attorney to which any certification has been executed (5) copies of the federal, state, and local income tax returns and reports for the 5 most recent years (6) a copy of any written operating agreement (7) any written records of proceedings of the members or managers (8) copies of any financial statements for the 5 most recent years <p>Permits members to inspect and copy any LLC records, at the member’s own expense, upon reasonable request.</p> <p>The section does not specifically state how access to information works in a manager-managed LLC.</p>
CREDITORS RIGHTS AGAINST MEMBERS/CHARGING ORDERS		
Exclusive remedy	<p>Yes - § 503(h) – Charging order is the exclusive remedy for a judgment creditor of a member/transferee to obtain a member/transferee’s financial rights to distributions from the LLC. A secured creditor retains UCC Article 9 remedies.</p>	<p>Unclear – § 7-16-37 – Rhode Island’s LLC statute does permit charging orders for judgment creditors of members, but does not state if this is the exclusive remedy for judgment creditors.</p>
Foreclosure		
Authorized	<p>Yes - § 503(c) – Court may foreclose the charging order/lien and order the sale of the transferable interest.</p>	<p>Unclear – The statute is silent.</p>

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FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Effect of foreclosure at sale	§ 503(c) – Purchaser of a foreclosed interest only obtains financial rights and does not become a member, except in the case of a foreclosure of a charging order lien against the sole member of an LLC. <i>See</i> § 503(f).	Unclear – The statute is silent.
Redemption rights	Yes - § 503(d) & (e) – Before foreclosure, the member or transferee whose interest is subject to the charging order may satisfy the judgment; or the LLC or a member not subject to the charging order may pay the judgment creditor the full amount due.	Unclear – The statute is silent.
REORGANIZATION – (DOMESTICATION, MERGER, INTEREST EXCHANGE, CONVERSION)		
Provided for	Yes - Article 10 provides for mergers, conversions, interest exchanges, and domestications. An LLC can merge or convert into another type of entity and other types of entities can merge or convert into an LLC. An LLC can exchange interests with another entity. An LLC can domesticate in another state and a foreign LLC can domesticate in the enacting state.	Yes -- § 7-16-59 – A domestic or foreign LLC may merge or consolidate with or into one or more domestic or foreign LLCs, LPs, or corporations. One or more LPs or corporations may also merge/consolidate with or into any domestic or foreign LLCs.
Vote required	Unanimous consent – Subject to the operating agreement, § 407(b)(4)(A) for member-managed LLCs and § 407(c)(3)(A) for manager-managed LLCs requires the consent of all members to approve an Article 10 transaction.	§ 7-16-21(b)(3) – Majority vote required to approve LLC merger/consolidation.
Appraisal (Dissenters’) rights	No express provision because unanimous consent is required for Article 10 transactions; but § 1007 preserves appraisal rights authorized by other law for other entities that are parties to transaction and also authorizes enforcement of contractual appraisal rights in an LLC’s operating agreement or the Plan.	Unclear – The statute is silent.
TECHNICAL IMPROVEMENTS		
Organization and navigation	Drafted in organized manner to provide ease of navigation; succinct provisions, avoids “over-corporatization.”	
Formation	§ 201- An LLC is formed when the certificate of organization is effective and at least one person has become a member.	§ 7-16-5 – An LLC is formed when the Secretary of State accepts the articles of organization for filing and issues the certificate of organization. One or more persons must deliver the executed articles of organization to the Secretary of State.
Permissible purpose	§ 108 – LLC is not restricted to for-profit business activities, but may engage in “any lawful purpose, regardless of whether for profit.” This expands the availability of LLCs to family vacation homes and organizations whose activities might be classified as non-profit.	§ 7-16-3 – An LLC is a company that has the purpose of “engaging in any lawful business . . . unless a more limited purpose . . . is set forth in the articles of organization.”

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FEATURE	ULLCA (2006)(2013)	RHODE ISLAND
Choice of law – internal affairs doctrine recognized	<p>§ 104 – Law of this state governs internal affairs of an LLC formed in this state and cannot be altered under § 105(c)(1).</p> <p>§ 901 – Law of the state of formation governs internal affairs and liability shield (including the internal series shield) of a foreign LLC.</p>	<p>§ 7-16-2(16) – Laws of this state govern the formation and existence of a domestic LLC.</p> <p>§ 7-16-2(14) – Laws of the state of formation govern a foreign LLC.</p>
Scope of liability shield	§ 304 – No status liability for members and managers, including after dissolution; formality failure is not a piercing element.	Unclear – The statute is silent.
Freedom of contract	No express provision but principles inherent throughout. The Act contains a basic set of internal affairs default rules, most of which can be altered by the operating agreement.	No express provision.
Name requirements and other filing requirements; registered agents	§§ 112-20 and 201-212 contain state- of-the-art filing provisions that will accommodate electronic filing of documents, if and when authorized by the enacting state; and also modernized registered agent provisions.	<p>§ 7-16-2(11) – Permits electronic delivery/filing.</p> <p>§ 7-16-8 – Filing requirements, generally</p>
Statute of Frauds not applicable to operating agreement	No – Common law statute of frauds applies.	Unclear – The statute is silent.
Indemnification	§ 408 – No indemnification for breach of distribution limitations or breach of management duties and responsibilities. Specific authorization for advance of fees and expenses.	§ 7-16-4(11) – The statute authorizes advance of expenses and fees to any member, manager, agent, or employee.
Foreign LLCs – modern language re:	Article 9 – Specific provisions relating to foreign LLCs.	§§ 7-16-48 through 7-16-55 – The statute has many provisions specific to foreign LLCs.
Acts not constituting doing business in state	§ 905 – Lists specific activities that do not constitute transacting business in this state.	Unclear – The statute is silent.
Consequences of doing business without having proper certificate of authority	§ 902(b) – An unregistered foreign LLC that transacts business in the state may not maintain an action or court proceeding.	Same – § 7-16-54 – An unregistered foreign LLC that transacts business in the state may not maintain an action or court proceeding.