

WSBA Legislative Committee – Proposed Legislation Cover Sheet

PURPOSE OF COVER SHEET: Completion of the information in this cover sheet will help expedite the Legislative Committee’s review and approval process. Of particular importance is information related to draft development and stakeholder work.

Short Title of Proposal: Corporate and LLC Entity Conversion Provisions

Submitted by (Section¹): Corporate Act Revision Committee (CARC) and LLC/Partnership Committee

Designated Section Representative and Contact Information (phone and email):

CARC: Michael Hutchings (michael.hutchings@dlapiper.com; 206.839.4824)

LLC/Partnership Committee: Jason Farber (jasonfarber@dwt.com; 206.757.8041)

Brief Summary of Bill and Anticipated Fiscal Impact:

The Conversion Provisions as they relate to the WBCA would permit the conversion of an entity into and out of a domestic (Washington) business corporation form in a single step. The Conversion Provisions for LLCs are based on the ULPA—the existing Washington statutes for conversions of limited partnerships. They are similar to the Conversion Provisions for corporations and would permit an organization to convert into a Washington LLC and a Washington LLC to convert into another organization in a single step. The Conversion Provisions would allow such transactions to occur directly through a single filing with the secretary of state.

Enactment of the Conversion Provisions is not expected to impose any costs on businesses or individuals to comply with the provisions. On the contrary, enactment of the Conversion Provisions would likely decrease the costs of conversion for business and stakeholders as a simplified process for conversion would reduce the number of steps now required to accomplish a conversion.

Brief Statement of Need:

The central reason for enacting the Conversion Provisions in Washington is to simplify the process for both converting corporations and LLCs into another entity type as well as changing an entity’s state of incorporation or formation from or to Washington. Conversions are common when entities are raising financing for their businesses and when preparing for public offerings or acquisitions.

Under current Washington law, it takes multiple steps to convert a corporation or LLC into another type of entity and the steps are unnecessarily burdensome. For example, a Washington LLC can convert into a corporation by forming a new corporation, transferring the LLC’s assets to the corporation, then liquidating the LLC and transferring the corporation’s stock to the LLC’s members. A similar method is used for the LLC to form the new corporation and then merge the LLC into the corporation. Each transaction is complex and may trigger unintended consequences, including potentially violating terms of the converting entity’s leases, licenses, loan documents and contracts, requiring new tax identification numbers, changing workers compensation experience ratings, etc.—even though the entity is merely changing shape but not changing its financial condition or ownership. The converting entity is likely to incur costs to negotiate out of these consequences. These extra steps and consequences are inefficient and unnecessary. This is why 28 states and the Model Business Corporation Act have adopted similar conversion provisions.

¹ For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
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Description of Draft Development - describe/explain:

1. The number and makeup of the drafting team, including practice areas.
2. The vote of the drafting team to approve the proposal.
3. The vote of the Section's Executive Committee to approve the drafting team's proposal.

During the past decade, three new types of business entities – LLCs, limited liability partnerships and limited liability limited partnerships – have come into wide use. Also during the past decade, restructuring transactions by and among all of the various types of entities began to occur with increased frequency. Currently, 28 states, including Delaware, have specific statutory provisions for the conversion of business entities from or to the various forms of business entities in that jurisdiction. Similarly, the Model Business Corporation Act adopted amendments in 2002 that provide a simpler and more direct means whereby a domestic corporation may become another form of business entity and vice-versa.

In 2009, the State of Washington adopted the Uniform Limited Partnership Act. The ULPA includes conversion provisions now codified in RCW 25.10.751 and following sections. These statutes authorize an organization to convert into a Washington limited partnership and authorize a Washington limited partnership to convert into another form of organization. However, these are the only conversion provisions under Washington law. Therefore, they have limited use.

Both CARC and the LLC/Partnership Committee began independently working on Conversion Provisions for corporations and limited liability companies. After beginning their independent drafting projects, both CARC and the LLC Committee realized, however, that combining their respective areas of expertise and seeking to harmonize the draft conversion provisions of each Committee would produce the best product for enactment by Washington.

The Conversion Provisions as they apply to the WBCA and the LLC Act were unanimously approved by CARC and the LLC/Partnership Committee, respectively.

The Conversion Provisions were unanimously approved by the Business Law Section's Executive Committee.

Submittal Status:

1. Has this proposal been submitted to the Legislative Committee before? Yes No
(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)
2. When was the proposal initially presented to the Legislative Committee? _____
3. Briefly, please provide the following:
 - (a) What concerns/questions were raised (or requests for additional information were made) by the Legislative Committee?
 - (c) How this proposal addresses any concerns/questions/requests raised or made by the Legislative Committee; and
 - (d) Any other information relevant to the status of the proposal.

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Summary of Completed/Ongoing Stakeholder Work (Vetting - Internal and External)

Referred to:	Feedback : (Support; Oppose; Concerns; Neutral; No response – Explain any opposition or concerns.)
CARC	Support
LLC/Partnership Committee	Support
Secretary of State	Ongoing
Department of Financial Institutions	Ongoing
Banking Lobby	Ongoing
WSBA Litigation Section	Ongoing

Summary of Other Potential Stakeholder Input

***Describe any other anticipated stakeholders, opposition, or concerns about the proposal.**

August 27, 2013

TO: Washington State Bar Association Business Law Section Executive Committee
FROM: Corporate Act Revision Committee and Partnership/LLC Law Committee
RE: **Proposed Entity Conversion Provisions**

Background of the Conversion Provisions

The proposed conversion provisions (the “Conversion Provisions”) are the result of a collaborative effort of the Business Section’s Corporate Act Revision Committee (“CARC”) and Partnership/Limited Liability Company Law Committee (the “LLC Committee”) to address an issue that cuts across their traditional areas of expertise.

In 2009, the State of Washington adopted the Uniform Limited Partnership Act. The ULPA includes conversion provisions now codified in RCW 25.10.751 and following sections. These statutes authorize an organization to convert into a Washington limited partnership and authorize a Washington limited partnership to convert into another form of organization. However, these are the only conversion provisions under Washington law. Therefore, they have limited use. They only apply to conversions of a Washington limited partnership into an organization governed by the laws of another jurisdiction or vice versa.

CARC and the LLC Committee are proposing to increase the utility of conversions by adding Conversion Provisions for Washington corporations and limited liability companies (LLCs). CARC and the LLC Committee believe that the adoption of this proposal will help encourage more corporations and LLCs to be formed in Washington, and will also encourage more existing corporations and LLCs to continue to be organized in Washington, because the proposed Conversion Provisions are currently available to similar entities that form in the majority of states, including Delaware, and they will streamline and simplify the current unnecessarily complex process of converting, resulting in a likely cost savings to those entities that want to convert.

During the past decade, three new types of business entities – LLCs, limited liability partnerships and limited liability limited partnerships – have come into wide use. Also during the past decade, restructuring transactions by and among all of the various types of entities began to occur with increased frequency. Currently, 28 states, including Delaware, have specific statutory provisions for the conversion of business entities from or to the various forms of business entities in that jurisdiction. Similarly, the Model Business Corporation Act adopted amendments in 2002 that provide a simpler and more direct means whereby a domestic corporation may become another form of business entity and vice-versa.

However, Washington law has trailed behind these developments in other states. Because of a lack of statutory authority in Washington, these restructuring transactions must be completed in two or three indirect steps rather than directly in a single transaction.

In response to these developments in other states, both CARC and the LLC Committee began independently working on Conversion Provisions for corporations and limited liability companies. After beginning their independent drafting projects, both CARC and the LLC Committee realized, however, that combining their respective areas of expertise would produce the best product for enactment by Washington.

Reasons for enacting the Conversion Provisions in Washington

The central reason for enacting the Conversion Provisions in Washington is to simplify the process for both converting corporations and LLCs into another entity type as well as changing an entity's state of incorporation or formation from or to Washington. Conversions are common when entities are raising financing for their businesses and when preparing for public offerings or acquisitions.

Under current Washington law, it takes multiple steps to convert a corporation or LLC into another type of entity and the steps are unnecessarily burdensome. For example, a Washington LLC can convert into a corporation by forming a new corporation, transferring the LLC's assets to the corporation, then liquidating the LLC and transferring the corporation's stock to the LLC's members. A similar method is used for the LLC to form the new corporation and then merge the LLC into the corporation. Each transaction is complex and may trigger unintended consequences, including potentially violating terms of the converting entity's leases, licenses, loan documents and contracts, requiring new tax identification numbers, changing workers compensation experience ratings, etc.—even though the entity is merely changing shape but not changing its financial condition or ownership. The converting entity is likely to incur costs to negotiate out of these consequences. These extra steps and consequences are inefficient and unnecessary. This is why 28 states and the Model Business Corporation Act have adopted similar conversion provisions.

The statutory conversion provided by the Conversion Provisions would involve only a single entity. There would be no need to form a new entity, no merger, no transfer of assets, and no dissolution. As such, this method is the least expensive to implement in terms of professional and other fees and is the simplest from an administrative and operational viewpoint. For example, the converting entity is, by law, the same legal entity after the conversion as before. Thus, the converted entity keeps the same original date of formation. In addition, a conversion is not a conveyance, transfer, or assignment, and the converted entity remains the owner of all real and personal property. A conversion would not trigger unintended consequences like violating assignment restrictions in contracts (unless the contract specifically restricts conversions). Finally, the converted entity retains all the liabilities, actual or contingent, that it had before the conversion.

The Conversion Provisions – Washington Business Corporation Act (WBCA)

The Conversion Provisions as they relate to the WBCA would permit the conversion of an entity into and out of a domestic business-corporation form in a single step. Currently, a corporation could convert to a different form of entity through multiple steps by creating and merging with a

wholly owned subsidiary of the desired form. The Conversion Provisions would allow such transactions to occur directly through a single filing with the secretary of state. If a corporation is converting to an entity in which the former shareholders would acquire personal liability, then the written consent of each such shareholder is required.

The Conversion Provisions also include simplified procedures for changing a corporation's state of incorporation. Although a change in the state of incorporation may still be carried out by merger or asset transfer, the Conversion Provisions provide a simpler and more direct means by which a Washington business corporation may become a non-Washington business corporation and vice-versa.

The Conversion Provisions exclude certain entities, such as nonprofit corporations, mutual corporations or miscellaneous corporations, or governmental or quasi-governmental organizations. A combination of two or more entities into a single entity is not authorized under the Conversion Provisions but must continue to be carried out under RCW 23B.11 (Merger and Share Exchange) or 23B.12 (Sale of Assets).

In the case of a conversion of a Washington corporation to a non-Washington corporation, approval of the conversion would require the approval of the board of directors and the percentage of shareholders that would be required to approve a merger. In the case of a conversion of a domestic corporation to a non-corporate form of entity, approval of the conversion would require the approval of all shareholders of the domestic corporation. A shareholder of a Washington corporation that adopts a conversion to a non-Washington corporation would have appraisal rights if the shareholder does not receive shares in the surviving corporation that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving corporation, as the shares held by the shareholder before the conversion.

When an entity converts to another form of entity under the Conversion Provisions, the converting entity becomes the other form of entity with the same status as if it had been originally incorporated or organized as the other entity. The date of incorporation or organization of a converting entity remains its date of incorporation or organization after the entity conversion. Title to all properties and all liabilities of the converting entity remain in the other entity as if the conversion had not occurred. A conversion from one form of entity to another form of entity is not a conveyance, transfer or assignment. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance, transfer or assignment. Nor does it give rise to a claim that a contract with the converting entity is no longer in effect on the ground of non-assignability (unless the contract specifically provides that it does not survive an entity conversion).

The Conversion Provisions – the Washington LLC Act

The Conversion Provisions for LLCs are based on the ULPA—the existing Washington statutes for conversions of limited partnerships. They are similar to the Conversion Provisions for corporations described above.

The Conversion Provisions will allow an organization to convert into a Washington LLC and a Washington LLC to convert into another organization in a single step. This includes a Washington LLC converting from or into another Washington organization. This also includes conversions from or into a non-Washington organization. To convert from or into a non-Washington organization, the conversion must be allowed by the other organization's governing statute and not restricted by the laws of its state.

A converted organization is for all purposes the same entity that existed before the conversion. The converted organization retains all of its assets and liabilities. All debts and obligations of the converting organization continue as obligations of the converted organization. A lawsuit pending by or against the converting organization may continue as if the conversion had not occurred. A conversion of a Washington LLC into another organization requires approval by all of the members of the Washington LLC. In addition, if a member will have personal liability with respect to the converted organization, then approval of the conversion will also require that each member that will have personal liability sign a separate written consent to become subject to personal liability.

Circulation to other constituencies

The Conversion Provisions have been reviewed by CARC and the LLC Committee. Both committees include representatives from the Washington Secretary of State's Office. In addition, the Conversion Provisions will also be provided to other potentially interested constituencies, including the Secretary of State's Office, the Department of Financial Institutions, the banking lobby and WSBA's Litigation Section.

IMPORTANT

Please note that the following two revision requests are being merged into a single bill which is currently at the Code Revisor's for drafting. We do not yet have a combined draft but will forward it on to all committee members as soon as it is ready.

Thank you

§ 23B.[09.010]. Definitions.

As used in this chapter:

- (1) “Converting entity” means the domestic corporation that adopts a plan of entity conversion or the other entity converting to a domestic corporation.
- (2) “Domestic other entity” means an other entity organized under the laws of this state.
- (3) “Foreign other entity” means an other entity organized under a law other than the laws of this state.
- (4) “Interest holder” means a person who holds of record:
 - (a) a right to receive distributions from an other entity either in the ordinary course of business or upon liquidation, other than as an assignee; or
 - (b) a right to vote on issues involving an other entity’s internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.
- (5) “Interests” means the interests in an other entity held by its interest holders.
- (6) “Organic document” means a public organic document or a private organic document.
- (7) “Organic law” means the statute governing the internal affairs of a domestic corporation or other entity.
- (8) “Other entity” means any association or entity other than a domestic corporation, a domestic or foreign nonprofit corporation, a domestic or foreign mutual corporation or miscellaneous corporation, or a governmental or quasi-governmental organization. The term includes, without limitation, foreign corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts and profit unincorporated associations.
- (9) “Owner liability” means personal liability for a debt, obligation or liability of an entity that is imposed on a person:
 - (a) solely by reason of the person’s status as a shareholder or interest holder;
or

- (b) by the articles of incorporation, bylaws or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws or an organic document to make one or more specified shareholders, members or interest holders liable in their capacity as shareholders, members or interest holders for all or specified debts, obligations or liabilities of the entity.
- (10) “Private organic document” means any document, other than the public organic document, if any, that determines the internal governance of an other entity.
- (11) “Public organic document” means the document, if any, that is filed of public record to create an other entity, including amendments and restatements thereof.
- (12) “Surviving entity” means the domestic corporation or other entity that is in existence immediately after consummation of an entity conversion pursuant to this chapter.

§ 23B.[09.100]. Entity conversion.

- (1) A domestic corporation may become an other entity pursuant to a plan of entity conversion if the entity conversion is permitted by the organic law of the other entity by:
 - (a) Complying with RCW 23B.[09.300]; and
 - (b) Filing articles of entity conversion with the secretary of state.
- (2) An other entity may become a domestic corporation if the entity conversion is permitted by the organic law of the other entity by:
 - (a) Complying with the procedures for the approval of an entity conversion provided in the organic law of the other entity; and
 - (b) Filing articles of entity conversion with the secretary of state.

§ 23B.[09.200]. Plan of entity conversion.

A plan of entity conversion must be in a record and must include:

- (1) The name of the domestic corporation before conversion;
- (2) The name and form of the surviving entity after conversion;
- (3) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

- (4) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

§ 23B.[09.300]. Approval of a plan of entity conversion.

In the case of an entity conversion of a domestic corporation to an other entity:

- (1) The plan of entity conversion must be adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.
- (2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.
- (3) The board of directors must recommend the plan of entity conversion to the shareholders, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders.
- (4) The board of directors may condition its submission of the plan of entity conversion on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.
- (5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on a the plan.
- (6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.
- (7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, in addition to the approval requirements

under subsections (5) and (6) of this section, approval of the plan of entity conversion shall also require each such shareholder to execute a separate record consenting to become subject to such owner liability.

- (8) If the approval of the shareholders is to be given at a meeting, the domestic corporation shall notify each shareholder, whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice shall include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the conversion.
- (9) If any provision of the articles of incorporation, bylaws or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted or entered into before [the effective date of this chapter], applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision shall be deemed to apply to an entity conversion of the domestic corporation until such time as the provision is subsequently amended.

§ 23B.[09.400]. Articles of entity conversion.

- (1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion shall be signed on behalf of the domestic corporation by any officer or other duly authorized representative and shall be delivered to the secretary of state for filing.
- (2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion shall be signed on behalf of the converting entity by any officer or other duly authorized representative and shall be delivered to the secretary of state for filing.
- (3) The articles of entity conversion shall set forth:
 - (a) A statement that the converting entity has been converted into the surviving entity;
 - (b) The name and form of the converting entity before conversion;
 - (c) The name and form of the surviving entity after conversion, which name shall be a name that satisfies the requirements of RCW 23B.04.010 if the surviving entity after conversion is a domestic corporation;

- (d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;
 - (e) The date the conversion is effective under the organic law of the surviving entity;
 - (f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.[09.300];
 - (g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and
 - (h) If the surviving entity is a foreign other entity not authorized to transact business in this State, (i) a statement that the surviving entity appoints the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation and (ii) the street and mailing address of an office which the secretary of state may use for the purposes of RCW 23B.15.100.
- (4) The articles of entity conversion shall take effect at the effective time provided in RCW 23B.01.230. Articles of entity conversion under subsections (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity.

§ 23B.[09.500]. Effect of entity conversion.

- (1) An entity that has been converted pursuant to this chapter shall, for all purposes of the laws of the State of Washington, be deemed to be the same entity that existed before the conversion and, unless otherwise agreed or as required under applicable non-Washington law, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity.
- (2) When any conversion becomes effective under this chapter:
 - (a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;
 - (b) All rights of creditors and all liens upon any property of the converting entity shall be preserved unimpaired and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity and shall remain attached to the surviving entity, and may be enforced against it to the same extent as if said debts, liabilities, and

other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

- (c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;
 - (d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and
 - (e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.
- (3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:
- (a) To consent to the jurisdiction of the courts of this State to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this State on the obligation;
 - (b) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and
 - (c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW.
- (4) Service of process on the secretary of state under this section is made in the same manner and with the same consequences as in RCW 23B.15.100.

§ 23B.[09.600]. Abandonment of entity conversion.

- (1) Unless otherwise provided in a plan of entity conversion of a domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.
- (2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

§ 23B.13.020. Right to dissent.

- (1) A shareholder is entitled to dissent from, and obtain payment in the fair value of the shareholder's shares in the event of, any of the following corporation actions:

- (f) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if (i) the shareholder was entitled to vote on the plan and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity, as the shares held by the shareholder before the conversion.

Article XI. Mergers and Conversions	
<p>25.15.[390] Definitions</p> <p>In this article:</p> <p>(1) “Converted organization” means the organization into which a converting organization converts pursuant to RCW 25.15.391 through 25.15.394.</p> <p>(2) “Converting limited liability company” means a converting organization that is a limited liability company.</p> <p>(3) “Converting organization” means an organization that converts into another organization pursuant to RCW 25.15.391.</p> <p>(4) “Governing statute” of an organization means the statute that governs the organization’s internal affairs.</p> <p>(5) “Organization” means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not formed for profit.</p> <p>(6) “Organizational documents” means:</p> <p>(a) for a domestic or foreign general partnership, its partnership agreement;</p> <p>(b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;</p> <p>(c) for a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;</p> <p>(d) for a business trust, its agreement of trust and declaration of trust;</p> <p>(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and</p> <p>(f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.</p> <p>(7) “Personal liability” means personal liability for a</p>	<p>RCW numbering used for convenience. Cross-references will need proofing.</p>

<p>debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:</p> <p>(a) by the organization’s governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or</p> <p>(b) by the organization’s organizational documents under a provision of the organization’s governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.</p>	<p>The partnership law committee suggests that CARC use this definition instead of the ‘owner liability’ definition in the CARC conversion draft.</p>
<p>25.15.[391] Conversion</p> <p>(1) An organization other than a limited liability company may convert into a limited liability company, and a limited liability company may convert into another organization pursuant to this section and RCW 25.15.392 through RCW 25.15.394 and a plan of conversion, if:</p> <p>(a) the other organization’s governing statute authorizes the conversion;</p> <p>(b) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization’s governing statute; and</p> <p>(c) the other organization complies with its governing statute in effecting the conversion.</p> <p>(2) A plan of conversion must be in a record and must include:</p> <p>(a) the name and form of the organization before conversion;</p> <p>(b) the name and form of the organization after conversion;</p> <p>(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of the interests, shares, obligations, or other securities of the converted organization or any other organization or into cash or other property in whole or part; and</p> <p>(d) the organizational documents of the converted organization.</p>	<p>(1) permits conversion into a different form of entity or into the same form in a different jurisdiction.</p> <p>(2)(c) uses the same language as in the merger statute, 25.15.395(2)(c). Consider changing ULPA to be consistent, for example, in the last phrase: “or any other organization or into cash or other property in whole or part....”</p>
<p>25.15.[392] Action on Plan of Conversion by Converting Limited Liability Company</p> <p>(1) Subject to RCW 25.15.[421], a plan of conversion must be</p>	<p>(1) the approval requirement is the same approach as in RCW 25.10.761 http://apps.leg.wa.gov/rcw/default.aspx?cite=25.10.761</p>

<p>consented to by all the members of a converting limited liability company.</p> <p>(2) Subject to RCW 25.15.[421] and any contractual rights, after a conversion is approved, and at any time before a filing is made under RCW 25.15.[393], a converting limited liability company may amend the plan or abandon the planned conversion:</p> <p>(a) as provided in the plan; and</p> <p>(b) except as prohibited by the plan, by the same approval as was required to approve the plan.</p>	<p>Compare the following:</p> <p>Conversion of DE Corp: Unanimous approval; no dissenters' rights.</p> <p>Conversion of DE LLC: Majority approval; no dissenters' rights.</p> <p>Conversion of WA LP. Unanimous approval; no dissenters rights.</p>
<p>25.15.[393] Filings Required for Conversion; Effective Date</p> <p>(1) After a plan of conversion is approved, the converting organization must make one of the following filings to complete the conversion:</p> <p>(a) a converting limited liability company must deliver to the Secretary of State for filing articles of conversion, which must include:</p> <p>(i) a statement that the limited liability company has been converted into another organization;</p> <p>(ii) the name and form of the converted organization and the jurisdiction of its governing statute;</p> <p>(iii) the date the conversion is effective under the governing statute of the converted organization;</p> <p>(iv) a statement that the conversion was approved as required by this chapter;</p> <p>(v) a statement that the conversion was approved as required by the governing statute of the converted organization; and</p> <p>(vi) if the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office that the Secretary of State may use for the purposes of RCW 25.15.[394(3)]; or</p> <p>(b) a converting organization that is not a limited liability company must deliver to the Secretary of State for filing a certificate of formation, together with articles of conversion, which must include:</p> <p>(i) a statement that the limited liability company was converted from another organization;</p> <p>(ii) the name and form of the converting organization and the jurisdiction of its governing statute; and</p> <p>(iii) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.</p>	

<p>(2) The effective time of a conversion is either:</p> <p>(a) if the converted organization is a limited liability company, when the certificate of formation takes effect; or</p> <p>(b) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.</p> <p>(3) If the certificate of formation filed pursuant to this section does not specify a delayed effective date, it shall become effective upon filing. If the certificate of formation specifies a delayed effective time and date, the certificate of formation becomes effective at the time and date specified. If the certificate of formation specifies a delayed effective date but no time is specified, the certificate of formation is effective at the close of business on that date. A delayed effective date for a certificate of formation may not be later than the ninetieth day after the date it is filed.</p>	<p>(3): see the note in 25.15.405(5) on whether to add a general provision on a filing's delayed effective time.</p>
<p>25.15.[394] Effect of Conversion</p> <p>(1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.</p> <p>(2) When a conversion takes effect:</p> <p>(a) the title to all real estate and other property owned by the converting organization remains vested in the converted organization without reversion or impairment;</p> <p>(b) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;</p> <p>(c) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;</p> <p>(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;</p> <p>(e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and</p> <p>(f) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of [article VIII] of this chapter.</p> <p>(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting limited liability company, if before the conversion the converting limited liability company was subject to suit in this State on</p>	<p>(2) tracks the merger statute rather than ULPA. Consider changing ULPA to match.</p> <p>Subsection (3) tracks ULPA RCW 25.10.771(3).</p>

<p>the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in RCW 25.15.025(3).</p>	
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<p>25.15.[421] Restrictions on Approval of Conversions</p> <p>If a member of a converting limited liability company will have personal liability with respect to a converted organization, then, in addition to the approval requirements in RCW 25.15.[392](1), approval of a plan of conversion shall also require the signing, by each such member, of a separate written consent to become subject to such personal liability.</p>	<p>Tracks the CARC proposal.</p>
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<p>RCW 25.15.085 Execution.</p> <p>(1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under RCW 25.15.007, except as set forth in RCW 25.15.105(4)(b):</p> <ul style="list-style-type: none"> (a) Each original certificate of formation must be signed by the person or persons forming the limited liability company; (b) A reservation of name may be signed by any person; (c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name; (d) A registration of name must be signed by any member or manager of the foreign limited liability company; (e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members; (f) A certificate of dissolution must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(3); (g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited 	
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liability company, limited partnership, or corporation;

(h) If a converting limited liability company is filing articles of conversion, the articles of conversion must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members; and

(i) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.

(2) Any person may sign a certificate, articles of merger, articles of conversion, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

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