

## MICHIGAN LIMITED LIABILITY COMPANY ACT (EXCERPT)

Act 23 of 1993

### ARTICLE 10

#### **450.5001 Foreign limited liability company; laws of jurisdiction.**

Sec. 1001. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, and a foreign limited liability company shall not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

**History:** 1993, Act 23, Eff. June 1, 1993.

#### **450.5002 Transacting business; certificate of authority by foreign limited liability company required; application; filing; contents.**

Sec. 1002. Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority from the administrator. To obtain a certificate of authority, a foreign limited liability company shall file with the administrator an application, executed as provided in section 103, setting forth all of the following:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state.

(b) The jurisdiction and date of its organization.

(c) The address of its registered office in this state and the name of its resident agent at that address in accordance with section 207.

(d) A statement that includes both of the following:

(i) That the department is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subdivision (c), or, if appointed, the agent's authority has been revoked, the agent has resigned, or the agent cannot be found or served through the exercise of reasonable diligence.

(ii) The name and address of a member, manager, or other person to whom the administrator is to send copies of any process served on the administrator.

(e) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that state or, if not required to maintain an office by the laws of that state, of the principal office of the foreign limited liability company.

(f) Other additional information as may be necessary or appropriate in order to enable the department to determine whether the limited liability company is entitled to transact business in this state.

**History:** 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

#### **450.5003 Certificate of authority; issuance; powers, rights, and privileges of foreign limited liability company.**

Sec. 1003. (1) If the administrator finds that an application for a certificate of authority substantially conforms to the requirements of this act and all requisite fees have been paid, the administrator shall file the application and issue to the foreign limited liability company a certificate of authority to transact business in this state, in accordance with section 104.

(2) Upon the issuance of a certificate of authority, the foreign limited liability company may transact in this state any business that a domestic limited liability company formed under this act may lawfully transact, except as limited by statements in its application for a certificate of authority or under the law of its jurisdiction of organization. The authority continues so long as the foreign limited liability company retains its authority to transact such business in the jurisdiction of its organization and its authority to transact business in this state has not been surrendered, suspended, or revoked.

(3) A foreign limited liability company holding a valid certificate of authority in this state has no greater rights or privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

**History:** 1993, Act 23, Eff. June 1, 1993.

#### **450.5004 Certificate of authority; satisfaction of MCL 450.4204 required for issuance.**

Sec. 1004. The department shall not issue a certificate of authority to a foreign limited liability company unless the name of the company satisfies the requirements of section 204. If the name of a foreign limited liability company does not satisfy the requirements of section 204, the company may take the action

authorized by section 204(4).

**History:** 1993, Act 23, Eff. June 1, 1993;—Am. 2008, Act 567, Imd. Eff. Jan. 16, 2009.

**450.5005 Inaccurate application; correcting statement; certificate; exception; survivor of merger; certificate attesting to merger; annual statement.**

Sec. 1005. (1) If any statement in the application for certificate of authority of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the administrator a certificate, signed as provided in section 103, correcting the statement, except that a change in the resident agent or registered office may be made under section 209.

(2) If a foreign limited liability company authorized to transact business in this state is the survivor of a merger permitted by the laws of the jurisdiction of its organization, the foreign limited liability company shall file, not later than 30 days after the merger becomes effective, a certificate issued by the proper officer of the jurisdiction of its organization attesting to the occurrence of the merger. If the merger has changed the name of the foreign limited liability company or has otherwise affected the information set forth in the application, the foreign company shall also comply with subsection (1).

(3) A foreign limited liability company authorized to transact business in this state shall file an annual statement as required by section 207(3), and section 207a applies to the good standing of the company and to failures to file.

**History:** 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

**450.5006 Certificate of withdrawal; contents, form, manner, and execution of application.**

Sec. 1006. (1) A foreign limited liability company authorized to transact business in this state may withdraw from this state upon receiving from the administrator a certificate of withdrawal. In order to obtain the certificate, the foreign limited liability company shall file an application for withdrawal setting forth all of the following:

(a) The name of the foreign limited liability company and the jurisdiction under the laws of which it is organized.

(b) That the foreign limited liability company is not transacting business in this state.

(c) That the foreign limited liability company surrenders its authority to transact business in this state.

(d) That the foreign limited liability company revokes the authority of its resident agent to receive service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on the company by service upon the administrator.

(e) An address to which the administrator is to mail a copy of any process against the foreign limited liability company.

(f) Other additional information as is necessary or appropriate in order to enable the administrator to determine and assess any unpaid fees payable by the foreign limited liability company.

(2) The application for withdrawal shall be in the form and manner designated by the administrator and shall be executed for the foreign limited liability company as provided in section 103, or, if the foreign limited liability company is in the hands of a receiver or trustee, by the receiver or trustee on behalf of the company.

**History:** 1993, Act 23, Eff. June 1, 1993.

**450.5007 Foreign limited liability company; transacting business without certificate of authority.**

Sec. 1007. (1) A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain an action, suit, or proceeding in a court of this state until it has obtained a certificate of authority. This prohibition applies to both of the following in addition to the foreign limited liability company:

(a) A successor in interest of the foreign limited liability company, except a receiver, trustee in bankruptcy, or other representative of creditors of the foreign company.

(b) An assignee of the foreign limited liability company, except an assignee for value who accepts an assignment without knowledge that the foreign company should have but has not obtained a certificate of authority in this state.

(2) An action commenced by a foreign limited liability company having no certificate of authority shall not be dismissed if a certificate of authority is obtained before the order of dismissal. Any order of dismissal shall be without prejudice to the recommencement of the action, suit, or proceeding by the foreign limited liability company after it obtains a certificate of authority.

(3) The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in a court of this state.

(4) A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the administrator as its agent for service of process with respect to a cause of action arising out of the transaction of business in this state.

(5) A foreign limited liability company that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without a certificate in an amount equal to all fees that would have been imposed under this act upon the foreign limited liability company had it obtained the certificate, filed all documents required by this act, and paid all penalties imposed by this act. The attorney general may bring proceedings to recover all amounts due the state under this section.

(6) A foreign limited liability company that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, of not less than \$100.00 nor more than \$1,000.00 for each calendar month, not more than 5 years prior to the imposition of the penalty, in which it has transacted business without the certificate. The penalty shall not exceed \$10,000.00. Each manager, member, or authorized person who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed \$10,000.00.

(7) The civil penalties set forth in subsection (6) may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, managers, or authorized persons have transacted business in this state in violation of this act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of business by the foreign limited liability company and the further exercise of any rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has obtained a certificate of authority to transact business.

(8) A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

**History:** 1993, Act 23, Eff. June 1, 1993.

#### **450.5008 Activities not considered to be transacting business in state; applicability of section to other state laws.**

Sec. 1008. (1) Without excluding other activities that may not constitute transacting business in this state, a foreign limited liability company is not considered to be transacting business in this state, for the purposes of this act, because it is carrying on in this state any 1 or more of the following activities:

- (a) Maintaining, defending, or settling any proceeding.
- (b) Holding meetings of its members or carrying on any other activities concerning its internal affairs.
- (c) Maintaining bank accounts.
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities.
- (e) Selling through independent contractors.
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- (i) Owning, without more, real or personal property.
- (j) Conducting an isolated transaction that is completed within 30 days and that is not 1 in the course of repeated transactions of a like nature.
- (k) Transacting business in interstate commerce.

(2) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

**History:** 1993, Act 23, Eff. June 1, 1993.

**450.5009 Making or purchasing loans or participation or interest in loans.**

Sec. 1009. (1) A foreign limited liability company may acquire or, through another person entitled to transact business in this state, may make loans, or participations or interests in loans, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or a successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this state, and a foreign limited liability company may purchase a loan, or participation or interest in a loan, secured in whole or in part by a mortgage of real property located in this state, without maintaining authority to transact business in this state under this act or any other law of this state relating to the qualification or authority and without paying fees as required by law.

(2) Neither the failure of a foreign limited liability company to qualify or maintain authority to transact business in this state under this act or any other law of this state nor its failure to pay fees as required by law affects or impairs its ownership of the loans or participation or interests in the loans, whether made or acquired, or its right to collect and service the loans through another person entitled to transact business in this state, or its right to enforce the loans or to acquire, hold, protect, convey, lease, and otherwise contract and deal with respect to the property mortgaged as security.

**History:** 1993, Act 23, Eff. June 1, 1993.

**450.5010 Maintaining action to restrain by attorney general.**

Sec. 1010. The attorney general may maintain an action to restrain a foreign limited liability company transacting business in this state, with or without a certificate of authority, from any violation of this act.

**History:** 1993, Act 23, Eff. June 1, 1993.