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## **An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Revised Statutes, Title 31, chapters 17 and 19, which govern domestic and foreign partnerships and limited partnerships in Maine, become effective on July 1, 2007, and changes to those laws and other entity laws administered by the Secretary of State must be in place by July 1, 2007 in order for the Secretary of State to properly administer these laws; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 10 MRSA §1526-A,** as repealed and replaced by PL 1993, c. 349, §25, is repealed.

**Sec. 2. 13 MRSA §1502** is amended to read:

### **§ 1502. Existing cooperative groups**

Any group incorporated under the law of this State and operating on a cooperative basis ~~or must file articles of amendment as required by Title 13-C, and any unincorporated group operating on such a cooperative basis in this State may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter; and. The unincorporated group shall thereupon amend such of its articles and bylaws as are not in conformity with~~ to conform to the provisions hereof of this subchapter and file articles of incorporation as required by section 1551. A certified copy of the amended articles shall be filed and recorded with the Secretary of State and a fee of \$5 shall be paid.

**Sec. 3. 13 MRSA §1551** is amended to read:

### **§ 1551. Articles of incorporation; first meeting; fees**

Articles of incorporation for the formation of an association under this subchapter ~~shall~~ must be drawn up and filed in the same manner and under the same provisions as for organizing business corporations under ~~the general law~~ Title 13-C, except where such procedure would be inconsistent with this subchapter. The same provision ~~shall apply~~ applies under ~~said general law~~ Title 13-C to associations organized under this subchapter in respect to the first meeting of the corporation, and as to fees payable to the Secretary of State.

**Sec. 4. 13 MRSA §1758,** as enacted by PL 1993, c. 300, §1, is amended to read:

### **§ 1758. Dissolution**

By vote of at least 80% of its members or any larger percentage specified in the articles of incorporation or bylaws, a cooperative affordable housing corporation may vote to dissolve and terminate its proprietary leases. In addition, a cooperative affordable housing corporation must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C.

**Sec. 5. 13 MRSA §1824**, as amended by PL 1977, c. 522, §8, is further amended to read:

### **§ 1824. Filing and recording certificate of incorporation**

~~Before commencing business, the president, treasurer and a majority of the directors or trustees of every corporation organized under this subchapter shall prepare a certificate setting forth the, sign, date and deliver for filing with the Secretary of State articles of incorporation and, in a format approved by the Secretary of State, setting forth the names and addresses of the officers, and shall sign and make oath to it. Said certificate shall be presented to the Secretary of State accompanied by a copy thereof or by a data sheet containing all of the information required. After said certificate has been examined by the Secretary of State, and been by him certified to be properly drawn and signed and to be conformable to the Constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within 60 days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the office of the Secretary of State, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation and shall record said copy in a book kept for that purpose. A. The filing fee of \$5 shall be paid to the Secretary of State and a fee of \$8 shall be paid to registers of deeds for recording such certificate and certifying copies thereof for filing with the Secretary of State for a corporation formed under this subchapter is the same as for a corporation organized under Title 13-C. If articles of incorporation delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this subchapter, the Secretary of State shall file the articles of incorporation. The date of filing is the date of receipt by the Secretary of State. After filing the articles of incorporation under this subchapter, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing.~~

**Sec. 6. 13 MRSA §1825, sub-§2**, as amended by PL 1977, c. 522, §9, is further amended to read:

**2. Certificate recorded.** ~~After an amendment has been adopted, a certificate shall be prepared setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice-president and by the treasurer or secretary or assistant secretary shall prepare, and filed sign, recorded date and indorsed as in the case of original certificate of incorporation. For filing or recording an amendment to the articles, the association shall pay to the registers of deeds a fee of \$5, and a fee of \$5 shall be paid to the Secretary of State deliver for filing to the Secretary of State articles of amendment, in a format approved by the Secretary of State, setting forth the amendment adopted by the corporation as proposed in subsection 1. The filing fee for an amendment filed under this section is the same as for a corporation filing articles of amendment under Title 13-C. If articles of amendment delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this section, the Secretary~~

of State shall file the articles of amendment. The date of filing is the date of receipt by the Secretary of State. After filing the articles of amendment under this section, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing.

**Sec. 7. 13 MRSA §1952, sub-§1, ¶A** is amended to read:

A. The members of an association may at any regular meeting, or any special meeting called for the purpose, upon 30 days' notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by 2/3 of the voting power voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The members at the meeting shall by like vote designate a committee of 3 members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate its~~the association's~~ assets, pay its debts and divide any remainder among the members or other patrons in accordance with their respective rights and interests under their contracts with the association and the articles and bylaws. Upon final settlement by such trustees, the association shall be~~is~~ deemed dissolved and shall ~~cease~~ceases to exist. The trustees shall make a report, in quadruplicate, of the proceedings had under this section, which shall be signed and sworn to and filed as required for the filing of the articles of incorporationfile articles of dissolution as required by subsection 5.

**Sec. 8. 13 MRSA §1952, sub-§5** is enacted to read:

**5. Filing with the Secretary of State.** In addition to the requirements set forth in this section, a corporation organized under this subchapter must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C.

**Sec. 9. 13-B MRSA §1101-A, sub-§1, ¶D,** as enacted by PL 1995, c. 458, §9, is amended to read:

D. That no debts of the corporation remain unpaid, including the filing of the annual report as required by section 1301 and any fees or penalties owed to the Secretary of State under section 1112; and

**Sec. 10. 13-B MRSA §1117** is enacted to read:

### **§ 1117. Revival of nonprofit corporation after dissolution**

**1. Determination of need to revive corporation.** If the Secretary of State finds that a nonprofit corporation has dissolved in any manner under this chapter and that the nonprofit corporation should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the nonprofit corporation.

**2. Certificate of revival.** The certificate of revival must include:

A. The name of the nonprofit corporation and its original date of incorporation;

B. The name of the nonprofit corporation's registered agent and the address of its registered agent at the time of dissolution;

C. The name and address of the party or parties requesting the revival;

D. The purpose or purposes for which revival is requested; and

E. The time period needed to complete the purpose or purposes specified under paragraph D.

**3. Notice of revival.** The Secretary of State shall issue a notice to the nonprofit corporation to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival under this section.

**4. Termination of revival.** When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall send a notice to the nonprofit corporation at the address provided in subsection 2, paragraph C that the status of the nonprofit corporation has returned to the status prior to filing the certificate of revival under this section.

**Sec. 11. 13-B MRSA §1401, sub-§13,** as enacted by PL 1977, c. 525, §13, is amended to read:

**13. Restated articles of incorporation.** Restated articles of incorporation, as provided by section 805, §10; and if they change the purposes of the corporation, a further additional amount of \$5~~10~~;

**Sec. 12. 13-B MRSA §1401, sub-§14,** as amended by PL 2005, c. 529, §2, is further amended to read:

**14. Articles of merger or consolidation.** Articles of merger or consolidation, as provided by section 904, §25; and if the merger or consolidation changes the survivor's purposes, a further additional amount of \$15~~10~~;

**Sec. 13. 13-B MRSA §1401, sub-§15,** as enacted by PL 1977, c. 525, §13, is amended to read:

**15. Articles of merger or consolidation of corporations.** Articles of merger or consolidation of domestic and foreign corporations, as provided by section 906, \$10~~25~~, if the new or surviving corporation is a foreign corporation, plus the appropriate fee for authority to carry on activities in this State, if not previously so authorized; if the new or surviving corporation is a domestic corporation, the same sum as would be required for the merger or consolidation of domestic corporations;

**Sec. 14. 13-B MRSA §1401, sub-§21,** as enacted by PL 1977, c. 525, §13, is amended to read:

**21. Articles of merger.** Articles of merger of a foreign corporation, as provided by section 1206, \$10~~25~~;

**Sec. 15. 13-B MRSA §1401, sub-§22,** as amended by PL 2003, c. 673, Pt. WWW, §10 and as affected by §37, is further amended to read:

**22. Amendment to foreign corporation's application.** An amendment to a foreign corporation's application for authority to carry on activities in this State, as provided by section 1207, ~~\$10~~\$15;

**Sec. 16. 13-B MRSA §1401, sub-§23,** as enacted by PL 1977, c. 525, §13, is amended to read:

**23. Application for surrender of authority.** An application of a foreign corporation for surrender of its authority, as provided by section 1208, ~~\$5~~\$15;

**Sec. 17. 13-B MRSA §1401, sub-§34,** as amended by PL 2005, c. 12, Pt. FF, §2, is further amended to read:

**34. Late filing; penalty.** For failing to deliver an annual report by its due date, in addition to the annual report filing fee, \$25;-and

**Sec. 18. 13-B MRSA §1401, sub-§35,** as amended by PL 2005, c. 12, Pt. FF, §2, is further amended to read:

**35. Reinstatement fee after administrative dissolution of domestic or foreign corporation.** For failure to file an annual report, \$25 for each period of delinquency; for failure to pay the annual report late filing penalty, \$25; for failure to appoint or maintain a registered agent or registered office, \$25; for failure to notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued, \$25; and for filing false information, \$25.; and

**Sec. 19. 13-B MRSA §1401, sub-§36** is enacted to read:

**36. Certificate of revival after dissolution.** Certificate of revival after dissolution for a domestic nonprofit corporation, as provided in section 1117, \$25.

**Sec. 20. 13-C MRSA §123, sub-§1, ¶OO** is enacted to read:

OO. For an application for revival after dissolution under section 1425, the fee is \$150.

**Sec. 21. 13-C MRSA §1404, sub-§4** is enacted to read:

**4. Other requirements at the time of dissolution.** At the time of filing the articles under this section, the Secretary of State may require the corporation to file the annual report required to be filed under section 1621 and pay any fees or penalties owed to the Secretary of State under section 1420.

**Sec. 22. 13-C MRSA §1425** is enacted to read:

**§ 1425. Revival of a domestic business corporation after dissolution**

**1. Determination of need to revive corporation.** If the Secretary of State finds that a corporation has dissolved in any manner under this chapter and that the corporation should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the corporation.

**2. Certificate of revival.** The certificate of revival must include:

A. The name of the corporation and its original date of incorporation;

B. The name of the domestic business corporation's clerk and the address of its clerk at the time of dissolution;

C. The name and address of the party or parties requesting the revival;

D. The purpose or purposes for which revival is requested; and

E. The time period needed to complete the purpose or purposes specified under paragraph D.

**3. Notice of revival.** The Secretary of State shall issue a notice to the corporation to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival filed under this section.

**4. Termination of revival.** When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall send a notice to the corporation at the address provided in subsection 2, paragraph C that the status of the corporation has returned to the status prior to filing the certificate of revival under this section.

**Sec. 23. 31 MRSA §407, sub-§1, ¶B,** as amended by PL 1993, c. 316, §50, is further amended to read:

B. A registered agent for service of process on the limited partnership. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with the limited partnership's registered office; or

(2) A domestic or foreign business or nonprofit corporation, whether business or nonprofit, a domestic or foreign limited partnership or a domestic or foreign limited liability company authorized to do business or carry on activities in this State whose registered office also serves as the registered office of the limited partnership.

**Sec. 24. 31 MRSA §494, sub-§2, ¶B,** as amended by PL 1993, c. 316, §58, is further amended to read:

B. A registered agent for service of process on the limited partnership. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with the limited partnership's registered office; or

(2) A domestic or foreign business or nonprofit corporation, whether business or nonprofit, a domestic or foreign limited partnership or a domestic or foreign limited liability company authorized to do business or carry on activities in this State whose registered office also serves as the registered office of the limited liability company.

**Sec. 25. 31 MRSA §607, sub-§1, ¶B,** as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

B. A registered agent for service of process on a limited liability company. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with the limited liability company's registered office; or

(2) A domestic or foreign business or nonprofit corporation, whether business or nonprofit, a domestic or foreign limited partnership or a domestic or foreign limited liability company authorized to do business or carry on activities in this State whose registered office also serves as the registered office of the limited liability company.

**Sec. 26. 31 MRSA §608-F** is enacted to read:

**§ 608-F. Revival of domestic limited liability company after dissolution**

**1. Determination of need to revive company.** If the Secretary of State finds that a domestic limited liability company has dissolved in any manner under this chapter and that the domestic limited liability company should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the domestic limited liability company.

**2. Certificate of revival.** The certificate of revival must include:

A. The name of the domestic limited liability company and its original date of organization;

B. The name of the domestic limited liability company's registered agent and the address of its registered agent at the time of dissolution;

C. The name and address of the party or parties requesting the revival;

D. The purpose or purposes for which revival is requested; and

E. The time period needed to complete the purpose or purposes specified under paragraph D.

**3. Notice of revival.** The Secretary of State shall issue a notice to the domestic limited liability company to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival filed under this section.

**4. Termination of revival.** When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall issue a notice to the domestic limited liability company at the address provided in subsection 2, paragraph C that the status of the limited liability company has returned to the status prior to filing the certificate of revival under this section.

**Sec. 27. 31 MRSA §625, sub-§2** is enacted to read:

**2. Other requirements at the time of filing a certificate of cancellation.** At the time of filing the certificate under this section, the Secretary of State may require the limited liability company to file the annual report required to be filed under section 757 and pay any fees or penalties owed to the Secretary of State under section 608-A.

**Sec. 28. 31 MRSA §714, sub-§2, ¶B,** as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

B. A registered agent for service of process on a limited liability company. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with a limited liability company's registered office; or

(2) A domestic or foreign business or nonprofit corporation, whether business or nonprofit, a domestic or foreign limited partnership or a domestic or foreign limited liability company authorized to do business or carry on activities in this State whose registered office must also serve as the registered office of a limited liability company.

**Sec. 29. 31 MRSA §751, sub-§4,** as amended by PL 2003, c. 344, Pt. C, §31, is further amended to read:

**4. Registered name.** For filing of an application for a registered name of a foreign limited liability company under section 606-A, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing an application to renew the registration of a registered name, a fee of ~~\$155~~\$200;

**Sec. 30. 31 MRSA §751, sub-§25,** as repealed and replaced by PL 2005, c. 397, Pt. A, §36 and affected by §37, is amended to read:

**25. Certificate of conversion.** Certificate of conversion of a limited liability company to another type of business entity as provided by section 746, a fee of \$145; and

**Sec. 31. 31 MRSA §751, sub-§26,** as amended by PL 2005, c. 12, Pt. FF, §11, is further amended to read:



**26. Late filing penalty.** For failing to deliver an annual report by its due date, in addition to the annual report filing fee, a fee of \$50.; and

**Sec. 32. 31 MRSA §751, sub-§27** is enacted to read:

**27. Certificate of revival after dissolution.** Certificate of revival after dissolution for a domestic limited liability company, as provided in section 608-F, §150.

**Sec. 33. 31 MRSA §825, sub-§3** is enacted to read:

**3. Other requirements at the time of filing a certificate of renunciation of status.**

At the time of filing the certificate under this section, the Secretary of State may require the limited liability partnership to file the annual report required to be filed under section 873 and pay any fees or penalties owed to the Secretary of State under section 808-A.

**Sec. 34. 31 MRSA §871, sub-§4,** as amended by PL 2003, c. 344, Pt. C, §46, is further amended to read:

**4. Registered name.** For filing an application for a registered name of a foreign limited liability partnership under section 806-A, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing; and for filing an application to renew the registration of a registered name, the fee is \$155~~\$200~~;

**Sec. 35. 31 MRSA §1034, sub-§5** is enacted to read:

**5. Exception for certain obligations.** With regard to certain obligations incurred prior to the effective date of this chapter, the following provisions apply.

A. To the extent any obligations of a partnership were incurred prior to the effective date of this chapter and while the partnership was a limited liability partnership, the limitation on liability of a partner is governed exclusively by paragraph B and the provisions of subsection 3 do not apply.

B. A partner in a limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities however chargeable to the partnership or to another partner or partners, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed by another partner, employee, agent or representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership.

C. For purposes of defining an obligation to which paragraph B applies, the term of an obligation is the original term of the obligation plus, unless otherwise agreed in writing by the obligor partnership and the obligee, any period as to which the obligor partnership has an option to unilaterally renew or extend the term of such obligation.

**Sec. 36. 31 MRSA §1323,** as enacted by PL 2005, c. 543, Pt. C, §2, is amended by adding a new paragraph at the end to read:

At the time of filing the statement under this section, the Secretary of State may require the limited partnership to file the annual report required to be filed under section 1330, subsection 1 and pay any fees or penalties owed to the Secretary of State under section 1399.

**Sec. 37. 31 MRSA §1401-A** is enacted to read:

**§ 1401-A. Revival of domestic limited partnership after dissolution**

**1. Determination of need to revive partnership.** If the Secretary of State finds that a domestic limited partnership has dissolved in any manner under this subchapter and that the domestic limited partnership should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the domestic limited partnership.

**2. Certificate of revival.** The certificate of revival must include:

- A. The name of the domestic limited partnership and its original date of organization;
- B. The name of the domestic limited partnership's registered agent and the address of its registered agent at the time of dissolution;
- C. The name and address of the party or parties requesting the revival;
- D. The purpose or purposes for which revival is requested; and
- E. The time period needed to complete the purpose or purposes specified under paragraph D.

**3. Notice of revival.** The Secretary of State shall issue a notice to the domestic limited partnership to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival filed under this subsection.

**4. Termination of revival.** When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall issue a notice to the domestic limited partnership at the address provided in subsection 2, paragraph C that the status of the limited partnership has returned to the status prior to filing the certificate of revival under this section.

**Sec. 38. 31 MRSA §1460, sub-§19,** as enacted by PL 2005, c. 543, Pt. C, §2, is amended to read:

**19. Late filing penalty.** For failing to deliver an annual report by its due date, in addition to the annual report filing fee, a fee of \$50.; and

**Sec. 39. 31 MRSA §1460, sub-§20** is enacted to read:

**20. Certificate of revival after dissolution.** Certificate of revival after dissolution for a domestic limited partnership, as provided in section 1401-A, a fee of \$150.

**Sec. 40. Effective date.** Those sections of this Act that enact the Maine Revised Statutes, Title 31, section 1034, subsection 5; and section 1323, last paragraph; section 1401-A; and section 1460, subsection 20 take effect July 1, 2007.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved except as otherwise indicated.

## SUMMARY

This bill makes necessary technical changes to the laws relating to corporations, limited partnerships, limited liability companies, limited liability partnerships and general partnerships. The bill makes uniform changes to filing fees that were changed in 2004 and 2005 that were not changed as part of the overhaul of fee changes. This adjustment of filing fees is necessary to make similar filing fees in all entity laws uniform. This bill adds language to clarify that an entity must file all annual reports due and pay any outstanding fees or penalties due the Secretary of State prior to filing any dissolution or termination filing. This bill also adds a provision to revive domestic entities after dissolution for a specific purpose and specific amount of time. This bill also removes the requirement of a filing with the registers of deeds when cooperatives organize with the Secretary of State's office. Additionally, this bill adds language necessary to correct discrepancies in the original drafting of the Uniform Limited Partnership Act of 2007, which will become effective July 1, 2007.