

2010

Interstate Income Properties, Inc., a Utah corporation, and BRB - 5 A, LLC, a Utah Limited Liability Company v. D. Gregory Hales aka Don Gregory Hales aka D. Robert Hales; et al. : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS
STATE OF UTAH

INTERSTATE INCOME PROPERTIES,
INC., a Utah corporation, and BRB – 5 A,
LLC, a Utah Limited Liability Company,

Plaintiffs/Appellees,

vs.

D. GREGORY HALES aka DON
GREGORY HALES aka D. ROBERT
HALES; et al.,

Defendants/Appellants.

Appellate No. 20100025

District Court No. 090907394

BRIEF OF APPELLEES

Appeal from the December 9, 2009 Judgment Entered by the
Utah Third Judicial District Court, Salt Lake County
The Honorable Kate Toomey Presiding

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STATEMENT OF JURISDICTION

This Court's jurisdiction rests upon Utah Code Ann. § 78A-4-103(2)(j).

STATEMENT OF THE ISSUES

Appellees are Dissatisfied with Appellants' Statement of the Issues

Pursuant to Rule 24(b)(1) of the Utah Rules of Appellate Procedure, Appellees hereafter set forth their reasons for Appellees' dissatisfaction with Appellants' Statement of the Issues as well as Appellees' suggested Statement of the Issues.

Appellants' statements of the first two issues and classifications of those issues as questions of law and/or mixed questions of fact and law are incorrect. **The issue should be whether the trial court, as the fact finder, properly concluded that the Deeds of Trust that La Jolla Loans caused to be recorded against Pad A were wrongful liens as defined by Utah Code Ann. § 38-9-1(6).**

Standard of Review: The burden to establish that the evidence does not support a trial court's findings "is a heavy one, reflective of the fact that [appellate courts] do not sit to retry cases submitted on disputed facts." *Saunders v. Sharp*, 793 P.2d 927, 931 (Utah Ct. App. 1990). Utah's appellate courts will "not set aside" factual findings "unless they are clearly erroneous." *Id.* To establish the required "clear error" showing, "an appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be against the clear weight of the evidence." *Id.* (internal citations and quotations omitted).

CONSTITUTIONAL PROVISIONS, STATUTES, ETC.

The following statutory provisions are materially relevant to this appeal, and a copy of each is attached in Addendum A:

Utah's Wrongful Lien Statute (relevant provisions):

Utah Code Ann. §§ 38-9-1, 4, 7

Requirements for an Enforceable Quit Claim Deed:

Utah Code Ann. § 57-1-13

Permissible Prefiling Activities of a Utah Limited Liability Company:

Utah Code Ann. § 48-2c-404

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Utah Code Ann. §§ 48-2c-1203, 1301, 1302

STATEMENT OF THE CASE

Plaintiffs/Appellees Interstate Income Properties, Inc. and BRB-5 A, LLC (hereinafter “Appellees” when referred to jointly and “IIP” and “BRB-5” when referred to separately) filed a Complaint on May 4, 2009 in which they asserted numerous claims against disparate defendants. At issue in this appeal are Appellees’ claims against Appellants La Jolla Loans, Inc. (hereinafter “La Jolla”) and the several dozen defendants named due to their status as assignee beneficiaries (of interests in two Deeds of Trust recorded against property known as “Pad A”). In the Complaint, and, subsequently in a Petition to Nullify Wrongful Liens (filed on June 5, 2009), Appellees claimed that two Deeds of Trust recorded against Pad A by La Jolla were wrongful liens.

On August 17, 2009, the trial court held an evidentiary hearing regarding Appellees’ Petition to Nullify Wrongful Lien. After receiving both testamentary and documentary evidence, the trial court ruled that in 1997 IIP had transferred Pad A, by quit claim deed, to BRB-5. Because of this transfer, a 2007 transfer of Pad A from IIP to another entity (Carlsbad Development, LLC [hereinafter “Carlsbad”]) transferred no interest in Pad A to Carlsbad. Both of La Jolla’s Deeds of Trust relied upon Carlsbad’s purported interest in Pad A, and, therefore, the trial court granted Appellees’ Petition to Nullify Wrongful Liens. The trial court declared both Deeds of Trust filed by La Jolla null and void *ab initio* and awarded Appellees their costs and reasonable attorney’s fees (a total of \$26,212.50) pursuant to Utah Code Ann. § 38-9-7. The trial court then entered final Judgment on all of the claims between Appellees and La Jolla (and the assignee

beneficiaries) on December 15, 2009. Appellants subsequently filed their Notice of Appeal on January 4, 2010.

STATEMENT OF FACTS

IIP functioned as a holding company for several properties. (Tr. at 7:8-10.) On November 24, 1994, IIP received, by warranty deed, the property at issue in this case (“Pad A”). (Tr. at 6:11-17.) In September 1997, Robert and Barbara Busch, the directors of IIP, decided to move Pad A and other properties held by IIP into limited liability companies. (Tr. at 7:8-14.) On September 1, 1997, Robert and Barbara Busch executed Articles of Incorporation for BRB – 5, a company which was created solely to receive and hold Pad A. (Tr. at 32:14-33:5.) BRB – 5’s Articles of Incorporation were subsequently filed with the Utah Department of Commerce on October 24, 1997. (Tr. Ex. 6; Tr. at 15:9-16:2.)

On October 22, 1997, IIP transferred Pad A, by Quit-Claim Deed, to BRB – 5. (Tr. Ex. 5; Tr. at 12:21-14:10.) This Quit-Claim Deed (hereinafter “1997 Quit Claim Deed”) was recorded on October 24, 1997 at the Salt Lake County Recorder’s Office. (*Id.*) Barbara Busch signed the 1997 Quit Claim Deed. (Tr. Ex. 5; Tr. at 13:12-14.) At the time that Barbara Busch signed the 1997 Quit Claim Deed, she was a duly appointed and fully recognized director of IIP and its Vice President.¹ (Tr. Ex. 4; Tr. at 11:8-25.) Barbara Busch was also the sole shareholder of IIP stock at the time that she signed the 1997 Quit Claim Deed. (Tr. at 12:5-6; 78:11-13.) Barbara Busch signed the 1997 Quit Claim Deed

¹ Barbara Busch was appointed as a director of IIP no later than February 1997. (Tr. Ex. 4; Tr. at 11:11-12.)

after a meeting of IIP's directors in which she was authorized to transfer the property to BRB – 5. (Tr. at 12:21-13:21.)

Since the time that it received Pad A from IIP, BRB – 5 has owned Pad A for corporate business purposes. (Tr. at 16:13-20; 18:14-16.) Currently, BRB – 5 leases out (through an intermediary landlord) a portion of Pad A to Village Cleaners, Inc. (Tr. Ex. 12; Tr. at 59:5-60:17.) Also, BRB – 5 uses another portion of Pad A as its principal office; Pad A also serves as the principal office for several other related business entities. (Tr. at 23:14-15.)

On May 10, 2007, D. Gregory Hales (“Hales”), purporting to be a Vice President of IIP, signed a Quit Claim Deed (hereinafter “2007 Quit Claim Deed”) transferring IIP's interest in Pad A to Carlsbad Development, LLC. (Tr. Ex. 8; Tr. at 28:12-18.) Carlsbad Development, LLC is Hales' own company; in making this transfer, Hales essentially attempted to steal Pad A. (Tr. at 31:4-8; 33:6-9.) This 2007 Quit Claim Deed was recorded on May 10, 2007 at the Salt Lake County Recorder's Office. (*Id.*) The entry number of the 2007 Quit-Claim Deed is 10096047, book 9462, page 6265. (Tr. Ex. 8.) Hales was never a Vice President of IIP; rather, he was a Director (along with two other directors—Robert Busch and Barbara Busch), the Treasurer, and the Secretary.² (R. at 370, 388.) Neither the Board of Directors nor the President of Interstate gave Hales verbal or written permission to transfer property on behalf of IIP. (Tr. at 29:8-10.)

² Hales has since been removed from all of his positions within both IIP and BRB – 5. (R. at 370, 388.)

Carlsbad Development, LLC is a Utah limited liability company that was created in or around March 6, 2007. (R. at 370, 388.) Neither Robert nor Barbara Busch has ever had any interest in this company. (Tr. at 31:4-16.) According to the Articles of Organization, Hales is the manager of Carlsbad Development, LLC. (R. at 370, 388.) No members are disclosed. (*Id.*) On June 6, 2007, Carlsbad Development, LLC executed a Deed of Trust in which it was the trustor, Founder's Title Company was the trustee, and La Jolla was the beneficiary. (Tr. Ex. 9; Tr. at 30:2-8.) The Deed of Trust is signed by Hales as Carlsbad Development, LLC's manager. (Tr. Ex. 9.) In this Deed of Trust, Carlsbad Development, LLC pledged Pad A as collateral for a \$3,425,000.00 loan. (*Id.*) Carlsbad Development, LLC also pledged three other unrelated properties—Parcel 1, Parcel 1A, and Parcel 2—as collateral for this loan. (*Id.*) La Jolla requested that this Deed of Trust be recorded. (*Id.*; Tr. at 30:2-4.) This Deed of Trust was recorded on June 8, 2007 at the Salt Lake County Recorder's Office. (Tr. Ex. 9.) The entry number of the Deed of Trust is 10126404, book 9475, page 5663. (*Id.*)

Carlsbad Development II, LLC is a Utah limited liability company that was created in or around September 28, 2006. (R. at 371, 389.) Neither Robert nor Barbara Busch has ever had any interest in this company. (Tr. at 31:4-16.) According to the Articles of Organization, Hales is the manager of Carlsbad Development II, LLC, and Terri L. Hales and Development West I, LLC are members. (R. at 371, 389.) On June 6, 2007, Carlsbad Development II, LLC also executed a Deed of Trust in which it was the trustor, Founder's Title Company was the trustee, and La Jolla was the beneficiary. (Tr. Ex. 10; Tr. at 30:1-2, 9-11.) The Deed of Trust is signed by Hales. (Tr. Ex. 10.) In this

Deed of Trust, Carlsbad Development II, LLC pledged Pad A as collateral for a \$3,425,000.00 loan. (*Id.*) Carlsbad Development II, LLC also pledged three other unrelated properties—Parcel 1, Parcel 1A, and Parcel 2—as collateral for this loan. (*Id.*) These are the same three parcels that Carlsbad Development, LLC pledged in the Deed of Trust that it executed with La Jolla. (Tr. Ex. 9.) La Jolla requested that this Deed of Trust be recorded. (Tr. Ex. 10; Tr. at 30:9-11.) This Deed of Trust was recorded on June 8, 2007 at the Salt Lake County Recorder’s Office. (Tr. Ex. 10.) The entry number of the Deed of Trust is 10126405, book 9475, page 5703. (*Id.*)

La Jolla procured title insurance before closing the transaction with Carlsbad Development, LLC and Carlsbad Development II, LLC. (Tr. Ex. 18; Tr. at 96:9-14.) The title insurance policy identified the 1997 Quit Claim Deed as an exception to this title policy. (Tr. Ex. 18; Tr. at 96:24-97:3.) The exception included “[t]he interest of BRB – 5 a LLC as evidenced by that certain Quit Claim Deed: Recorded October 24, 1997.” (Tr. Ex. 18; Tr. at 101:7-102:25.)

On May 13, 2009, BRB – 5 sent a written request to La Jolla to remove the Deeds of Trust that it had recorded against Pad A. (R. at 372, 390.) As of May 28, 2009, La Jolla had not removed the Deeds of Trust. (*Id.*) As a result, BRB – 5 filed its Petition to Nullify Wrongful Liens. (R. at 366.)

SUMMARY OF ARGUMENTS

This case is very simple—La Jolla caused two Deeds of Trust to be recorded against Pad A despite the fact that the purported grantors, Carlsbad Development, LLC and Carlsbad Development II, LLC, had no interest in Pad A to transfer to La Jolla. Because of this, La Jolla's Deeds of Trust were wrongful liens, and the trial court was correct when it nullified both Deeds of Trust and awarded Appellants their attorney's fees and costs pursuant to Utah's Wrongful Lien Statute.

First, La Jolla has failed to marshal the evidence, as required under this Court's precedent. A proceeding to determine whether or not a lien is wrongful and should be nullified is, by statute and by its very nature, a fact-intensive proceeding. Therefore, because La Jolla has failed to marshal the evidence, this Court should accept the trial court's factual findings and affirm the trial court's nullification of the La Jolla Deeds of Trust.

Second, the Deeds of Trust that La Jolla caused to be recorded against Pad A were wrongful liens and the trial court did not err when it ordered that those Deeds of Trust be declared null and void ab initio. Because both of the Deeds of Trust were not authorized by BRB – 5 (the actual owner of Pad A), La Jolla recorded the Deeds of Trust in violation of Utah Code Ann. § 38-9-1 et seq.

The 1997 Quit Claim Deed was properly executed and recorded as required by Utah Code Ann. § 57-1-13, and therefore, as of October 22, 1997, all of IIP's interest in Pad A was transferred to BRB – 5. This transfer of Pad A from IIP to BRB – 5 was executed by IIP's owner and directory who had the requisite actual authority to transfer

Pad A, and such a transfer was a permissible pre-formation activity. Upon its recording, the 1997 Quit Claim Deed imputed notice to La Jolla (and the world) that Pad A had been transferred to BRB – 5. Additionally, BRB -5's suit to recover its property rights was a legitimate winding-up activity. These bases alone fully support the trial court's decision to nullify the La Jolla Deeds of Trust, and, therefore, this Court should affirm the trial court's Judgment.

Third, because the Court found that the 1997 Quit Claim Deed from IIP to BRB – 5 was a valid Quit Claim Deed, any further inquiry regarding Hales' purported authority or the validity of the 2007 Quit Claim Deed is irrelevant (and for that reason the trial court did not consider or rule upon those issues). IIP had no interest in Pad A to transfer to Carlsbad Development, LLC in 2007; even if Hales had authority to effect such a transfer, Carlsbad Development, LLC received nothing from IIP, and, therefore, transferred nothing through the Deed of Trust that it pledged to La Jolla. Because La Jolla had not received any interest in Pad A, the Deeds of Trust that it recorded against Pad A constituted wrongful liens.

ARGUMENT

The trial court's rulings and judgment should be affirmed. After hearing all of the evidence presented by both sides, the trial court found that the La Jolla Deeds of Trust were wrongful liens and declared them null and void *ab initio*. Such a ruling was amply supported by the evidence presented at the hearing and pertinent Utah statutory law.

I. LA JOLLA FAILED TO MARSHAL THE EVIDENCE.

Rule 24(a)(9) of the Utah Rules of Appellate Procedure requires “[a] party challenging a fact finding [to] first marshal all record evidence that supports the challenged finding.” Utah’s Supreme Court has specifically stated that, “[i]n order to challenge a court’s factual findings, an appellant must first marshal all the evidence in support of the finding and then demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below.” *Chen v. Stewart*, 2004 UT 82, ¶ 76, 100 P.3d 1177 (internal citations and quotations omitted); *see also Wayment v. Howard*, 2006 UT 56, ¶ 9, 144 P.3d 1147 (stating that, “when appealing a highly fact dependent issue, the appellant has a duty to marshal the evidence . . . and then show that these facts cannot possibly support the conclusion reached by the trial court”). If the evidence “taken in the light most favorable to the [court below] supports the [lower court’s finding, the Court] will affirm.” *Steenblik v. Lichfield*, 906 P.2d 872, 875 (Utah 1995).

The marshaling requirement is “not intended to gratuitously oppress an appellant; rather it exists to facilitate a structured, realistic, and skeptical appraisal of facts without unduly compromising the adversarial process.” *In the Matter of E.H. v. R.C. and S.C.*,

2006 UT 36, ¶ 64, 137 P.3d 809, 822. At its core, the “duty to marshal evidence contemplates that an appellant present every scrap of competent evidence introduced at trial which supports the very findings the appellant resists and then ferret out a fatal flaw in the evidence, becoming a devil’s advocate.” *Id.* (citation and quotations omitted).

Finally, this Court has “repeatedly . . . warned of the grim consequences parties face when they fail to fulfill the marshaling requirement.” *United Park City Mines Co. v. Stichting Mayflower Mtn. Fonds*, 2006 UT 35, ¶ 27, 140 P.3d 1200, 1207. When an appellant fails to perform this “critical task,” the Court “rel[ies] on that failure to affirm the lower court’s findings of fact.” *Id.*; see also *In the Matter of E.H.*, 2006 UT 36, ¶ 65; *Martinez v. Media-Paymaster Plus*, 2007 UT 42, ¶ 19, 164 P.3d 384, 390 (stating that “parties that fail to marshal the evidence do so at the risk that the reviewing court will decline, in its discretion, to review the trial court’s factual findings”).

To prevail in this appeal, La Jolla is obligated to marshal the facts. A court’s decision regarding whether or not a document filed against an owner’s property is a wrongful lien is a highly fact-dependent question. Utah’s wrongful lien statute requires that an evidentiary hearing be held prior to any determination that a document is a wrongful lien. See Utah Code Ann. § 38-9-7(5)(a) (requiring that a trial court “determine[] that a document is a wrongful lien” only “[f]ollowing a hearing on the matter”); see, e.g., *Anderson v. Wilshire Invs., L.L.C.*, 2005 UT 59, ¶ 23, 123 P.3d 393 (describing a trial court’s obligations if it “*finds* that a document is a wrongful lien” (emphasis added)).

Although the “question of what constitutes a wrongful lien for purposes of” Utah’s Wrongful Lien Act “is a legal question of statutory interpretation,” *Hutter v. Dig-It, Inc.*, 2009 UT 69, ¶ 8, 219 P.3d 918, such a question is not at issue in this appeal. La Jolla does not challenge the trial court’s determination that the Deeds of Trust are documents that can constitute wrongful liens under the statutory definition of a wrongful lien. Rather, La Jolla challenges the trial court’s determination that, based upon the facts presented at the wrongful lien hearing, the La Jolla Deeds of Trust were wrongful liens. This is a quintessential fact question, and the trial court correctly treated it as such. Because La Jolla did not “describe how the evidence in the record, which appeared to support the district court’s findings, was insufficient” *Commercial Debenture Corp. v. Amenti, Inc.*, 2010 UT 10, ¶ 14, the trial court’s findings and ultimate determination that the Deeds of Trust were wrongful liens must be affirmed.

II. THE TRIAL COURT’S RULING THAT THE LA JOLLA DEEDS OF TRUST WERE WRONGFUL LIENS SHOULD BE AFFIRMED.

Utah’s wrongful lien statute created a specific mechanism for owners of property to remove illegitimate liens from a property’s title. The statute begins by defining wrongful liens and the relevant subjects of a wrongful lien action. A wrongful lien is:

[A]ny document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

- (a) expressly authorized by this chapter or another state or federal statute;
- (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
- (c) signed by or authorized pursuant to a document signed by the owner of the real property.

Utah Code Ann. § 38-9-1(6). A lien claimant is “a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.” Utah Code Ann. § 38-9-1(2). A record interest holder is “a person who holds or possesses a present, lawful property interest in certain real property ... and whose name and interest in that real property appears in the county recorder’s records for the county in which the property is located.” Utah Code Ann. § 38-9-1(4)(a). Finally, a record owner is “an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder’s records for the county in which the property is located.” Utah Code Ann. § 38-9-1(5).

Utah’s wrongful lien statute allows “[a]ny record interest holder of real property against which a wrongful lien ... has been recorded” to “petition the district court in the county in which the document was recorded for summary relief to nullify the lien.” Utah Code Ann. § 38-9-7(1). This petition must “state with specificity the claim that the lien is a wrongful lien” and must also “be supported by a sworn affidavit of the record interest holder.” Utah Code Ann. § 38-9-7(2). If the petition fulfills these requirements, “the court shall schedule a hearing within ten days to determine whether the document is a wrongful lien.” Utah Code Ann. § 38-9-7(3)(b).

At the hearing, BRB – 5 demonstrated that it is a record owner of Pad A. BRB – 5 also demonstrated that La Jolla was a lien claimant. BRB – 5 then demonstrated that the liens claimed by La Jolla were wrongful liens, for La Jolla caused two Deeds of Trust to be recorded against Pad A that were not signed by or authorized by BRB – 5, Pad A’s

owner. Despite the fact that La Jolla assails the trial court's application of the facts presented at the hearing to the various statutes at issue, La Jolla has not shown that the trial court's determination was in error. Therefore, the trial court's decision must be affirmed.

A. IIP properly executed the 1997 Quit Claim Deed and transferred all of its ownership interests in Pad A to BRB – 5 on October 22, 1997.

The 1997 Quit Claim Deed included all of the statutorily-identified requirements for legal and binding execution. It included a grantor, a grantee, a description of the property, a date of execution, and the grantor's signature. Barbara Busch signed the 1997 Quit Claim Deed with actual authority from IIP and, therefore, bound IIP as grantor. Furthermore, IIP's transfer of Pad A to BRB – 5 was a permissible pre-filing activity. Appellees introduced myriad facts supporting these points at the hearing, and Appellants have failed to marshal that evidence and demonstrate why the trial court was in clear error when it found that the 1997 Quit Claim Deed satisfied Utah's statutory requirements and transferred all of IIP's interest in Pad A to BRB – 5. Therefore, this Court should affirm the trial court's findings and ultimate ruling—that the Deeds of Trust recorded against Pad A were wrongful liens.

¹ The 1997 Quit Claim Deed “substantially” followed Utah’s requirements for an enforceable and valid conveyance by quit claim deed.

Under Utah's Quit Claim Deed statute, “[a] quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described.” Utah Code Ann. § 57-1-13. To execute a quit claim deed “as required by law,” the statute requires only that the deed

“substantially” follow a suggested form. *Id.* The form requires that the grantor be identified, that the grantee be identified, that the property be identified, and that the grantor sign and date the Quit Claim Deed. *Id.* If a quit claim deed includes these requirements, it is valid and binding, and upon the date of its recording, it “impart[s] notice to all persons” of the conveyance. Utah Code Ann. § 57-3-102(1).

At the hearing, BRB-5 demonstrated that the 1997 Quit Claim Deed identified IIP as the grantor and BRB – 5 as the grantee, that it accurately identified and described the property to be conveyed, and that it contained a signature and a date. Therefore, the 1997 Quit Claim Deed “substantially” followed the form required by Utah statute, and, as a result, was a valid and binding conveyance. Analysis of the facts presented at the hearing and their legal significance demonstrates the burden that Appellants face in their obligation to marshal facts as well as how Appellants have failed to meet that burden.

ii. Barbara Busch was duly authorized to execute the 1997 Quit Claim Deed, and the fact that her title did not appear next to her signature does not invalidate IIP’s transfer of Pad A to BRB – 5.

In Utah, an agent makes “its principal responsible for the agent’s actions [if] the agent is acting pursuant to either actual *or* apparent authority.” *Zions First Nat’l Bank v. Clark Clinic Corp.*, 762 P.2d 1090, 1094 (Utah 1988) (emphasis added). This means that an action taken with actual authority binds the principal, whether or not the principal made any efforts to create apparent authority on behalf of the agent. According to the Utah Supreme Court, “[a]ctual authority incorporates the concepts of express and implied authority[,]” and “[e]xpress authority exists whenever the principal directly states that its agent has the authority to perform a particular act on the principal’s behalf.” *Id.*

La Jolla's argument that the 1997 Quit Claim Deed was deficient because Barbara Busch's signature was not accompanied by a "statement of her position or agency to act on behalf of Interstate" is not well placed. (Appellants' Brief at 25.) Utah's Quit Claim Deed statute does not require that a limited liability entity denote its agent's title when making a transfer. Utah Code Ann. § 57-1-13. The statute requires only that the grantor be identified, that the grantee be identified, that the property be identified, and that the grantor sign and date the Quit Claim Deed. There is no requirement that the grantor specifically identify the nature of its agent's authority.

1. Barbara Busch had actual authority to act as a corporate agent and transfer the property from IIP to BRB – 5.

Under Interstate's bylaws, Barbara Busch had actual authority to bind Interstate. Therefore, the transfer of Pad A to BRB – 5 was valid. Interstate appointed Barbara Busch to be a director no later than February, 2007. Under Interstate's bylaws, Barbara Busch was authorized, as a director, to "conduct, manage, and control the affairs of the business of the corporation." Acting with this authority, Barbara Busch transferred Pad A from IIP to BRB – 5 on October 22, 1997. Barbara Busch was one of IIP's duly appointed directors. She acted as such when she signed the 1997 Quit Claim Deed that transferred Pad A to BRB – 5.

Also, an objective review of the 1997 Quit Claim Deed reveals that Barbara Busch signed in her capacity as director of IIP. The grantor—Interstate—is clearly identified in the text of the Quit Claim Deed. Nowhere within the 1997 Quit Claim Deed is Barbara Busch mentioned or denoted as acting in a personal capacity. The 1997 Quit Claim deed

“substantially” complied with the statutory requirements (in that it included a grantor, grantee, property description, signature of an authorized agent, and a date), which is all that is required to effect a valid conveyance through a quit claim deed. U.C.A. § 57-1-13.

2. Barbara Busch’s acknowledgement does not transform the Quit Claim Deed from a corporate action into an action undertaken by Barbara Busch personally.

La Jolla’s argument that the term “acknowledged before me” somehow changes the transaction from a corporate transaction to one in Barbara Busch’s personal name is an incorrect application of the statutory language within Utah Code Ann. § 57-2a-2. The statute states that “the person acknowledging” in the case of “a corporation, the officer or agent acknowledged he held the position or title set forth in the document or certificate, he signed the document on behalf of the corporation by proper authority, and the document was the act of the corporation for the purpose stated in it.” Utah Code Ann. § 57-2a-2(1)(c)(ii). Simply because the statute includes language that, when signing on behalf of a corporation, the signer swears that the position or title set forth in the document is the signer’s true title or position, does not mean that the position or title must be specifically set forth within the document for the acknowledgement to be effective. The acknowledgement within the 1997 Quit Claim Deed is clear: Barbara Busch appeared before a notary and executed the Quit Claim Deed with authority from and on behalf of the grantor, IIP. Nothing within the document or statutory presumptions says otherwise.

Additionally, an acknowledgment demonstrates that “in the case of a person executing a document in a representative capacity,” the person “taking the

acknowledgement” had either “satisfactory evidence or received the sworn statement or affirmation of the person acknowledging that the person had the proper authority to execute the document.” Utah Code Ann. § 57-2a-2(1)(d)(ii). This provision cures any possible *de minimis* deficiency left by the noninclusion of Barbara Busch’s corporate title next to her signature. By signing and stamping the 1997 Quit Claim Deed, the notary public acknowledged that she had satisfactory evidence of Barbara Busch’s authority to execute the 1997 Quit Claim Deed on behalf of IIP.

3. The presumption within Utah Code Ann. § 57-4a-4(g) applies.

Under Utah law, a recorded quit claim deed carries with it statutory presumptions. For example, “[a] recorded document creates” a presumption “regarding title to the real property affected” that the “person executing [the] document as an . . . officer of an organization . . . held the position he purported to hold and acted within the scope of his authority [and] was authorized under all applicable laws to act on behalf of the organization.” Utah Code Ann. § 57-4a-4(g). Since (1) the grantor was correctly identified within the 1997 Quit Claim Deed as IIP and (2) the 1997 Quit Claim Deed was recorded, the transfer is supported by this statutory presumption.

La Jolla cites no Utah case law (and introduced no facts at the hearing or in its initial Appellate Brief) to rebut this presumption. La Jolla simply takes the very narrow view that, unless the corporate officer’s title or position is clearly stated within the document, no presumption can apply. Such an interpretation is incorrect. Again, just like in Utah’s acknowledgement statute, there is no specific requirement within this statute that a corporate officer indicate his specific office or title. If a title or position is indicated

within a document, such a title or position is presumed to be correct. However, if the content of the document itself clearly denotes that a corporation is taking action and a corporate officer is necessarily signing on behalf of the corporation, nothing within the language of the statute deprives that document of the same presumption.

Barbara Busch had actual authority to act on behalf of IIP when she signed the 1997 Quit Claim Deed. The 1997 Quit Claim Deed clearly stated that IIP, not Barbara Busch, was transferring its interest in Pad A to BRB – 5. La Jolla’s arguments that the 1997 Quit Claim Deed was deficient because it lacked an indication of Barbara Busch’s position at IIP are incorrect.

iii. IIP’s transfer of Pad A to BRB – 5 was a permissible pre-filing activity under Utah Code Ann. § 48-2c-404.

La Jolla both mischaracterizes the trial court’s “necessar[y] conclu[sion]” regarding the status of BRB – 5 on October 22, 1997 and overlooks the required analysis under Utah law when determining whether or not the Quit Claim Deed was effectively conveyed from IIP to BRB – 5. Instead, La Jolla spends approximately nine pages arguing legal principles that are irrelevant. The trial court very clearly considered whether or not the 1997 Quit Claim Deed was delivered to BRB – 5 through a transaction of business that was incidental to BRB – 5’s organization, therefore, La Jolla’s arguments that BRB – 5 was a non-existing entity, that Utah does not recognize de facto corporations, and that delivery was invalid have no impact on the actual question—whether or not the 1997 Quit Claim Deed was executed as part of the incidental transactions of business required prior to the formation of BRB – 5. The trial court’s

conclusion that the 1997 Quit Claim Deed was executed and delivered as a business transaction incidental to BRB – 5’s organization was fully supported by the evidence presented at the hearing as well as Utah statutory law.

- 1. The trial court specifically considered evidence regarding the incidental nature of the business transaction between IIP and BRB – 5 and, by its finding that the 1997 Quit Claim Deed was a valid conveyance, necessarily concluded that the transfer of Pad A was incidental to BRB – 5’s organization.**

Utah’s Revised Limited Liability Company Act contains a specific provision that allows limited liability companies to engage in “[p]refiling activities.” Utah Code Ann. § 48-2c-404.³ Under the statute, a company “may not transact business . . . until its articles of organization have been filed with the division” *unless* the business it transacts is “incidental to its organization.” *Id.* Through this statute, Utah law has created a specific method for businesses to make preliminary preparations and undertake foundational transactions that are necessary to create viable companies.

IIP and BRB – 5, both of which were companies owned and managed by Robert and Barbara Busch, engaged in prefiling activities incidental to BRB – 5’s organization when IIP transferred Pad A to BRB – 5. At the hearing, it was undisputed that, on September 1, 1997, Robert and Barbara Busch signed BRB – 5’s Articles of Organization. Robert Busch testified that BRB – 5 was created specifically to receive a parcel of property from IIP, and Barbara Busch testified that IIP met specifically to

³ Although this statutory provision was enacted in 2001, its predecessor (Utah Code Ann. § 48-2b-118(3), which was in effect on October 22, 1997) also permitted prefiling transaction of business that was “incidental to” a limited liability company’s “organization.” *See* Chapter 176, Laws of Utah 1996, attached as Addendum B.

authorize Pad A's transfer from IIP to BRB – 5. Furthermore, Robert Busch testified (and the relevant documents show) that the 1997 Quit Claim Deed was recorded on the same day as BRB – 5's Articles of Organization were filed. All of the evidence presented at the hearing pointed to one conclusion: that BRB – 5 was created for the purpose of receiving title to Pad A from IIP. As part of all of these pre-filing activities, IIP transferred Pad A to BRB – 5.

The trial court also specifically considered the applicability of this statute during the hearing. The trial court asked Appellees' attorney to discuss "the timing of the quitclaim deed vis-à-vis the establishment of BRB-5" and whether or not receiving a deed prior to filing articles of organization was considered "conducting business" or "transacting business." (Tr. at 118: 6-8, 15; 119:1-2.) Appellees' attorney explained the reasons why the facts surrounding this conveyance satisfied § 404's requirements. (Tr. at 118:9-14, 16-17, 20-25; 119:3-4, 6-13.) The trial court then specifically found that the 1997 Quit Claim Deed "satisfied the statutory requirements of U.C.A. § 57-1-13" and "transferred all of [IIP's] interest in Pad A to BRB – 5." (R. at 886.)

La Jolla's only attempt to undercut the trial court's ruling regarding the validity of the transfer of Pad A (which, at least implicitly, is based upon a factual finding that the conveyance of Pad A was a business transaction that was incidental to BRB – 5's organization) is to minimize the scope of the statutory term "incidental." Rather than acknowledging the obvious purpose of the statute—that transactions that are central to creation of a limited liability company can still be recognized if they occur prior to the date of filing as incidents to the company's creation—La Jolla attempts to paint the

statute as allowing only those transactions that “are preparatory to filing articles of organization or commencing business.” (Appellants’ Br. at 24.)

Such an interpretation is directly contrary to the purpose and scope of the statute, which allows the acceptance of “subscriptions for or payment of contributions” prior to filing and also specifically recognizes as valid “any debts, contracts, or liabilities of the company incurred on behalf of the company prior to the filing of its articles of organization with the division.” Utah Code Ann. § 48-2c-404. The statute allows and recognizes transactions that are incidents to the creation of a limited liability company. Since BRB – 5 was created specifically to receive and hold IIP’s property, receiving this property was incident to BRB – 5’s creation and recognized as legitimate by the Prefiling Activities statute.

2. Recognition of the validity of the 1997 Quit Claim Deed does not resurrect the de facto corporation doctrine.

Also, La Jolla’s argument that allowing this transfer would “resurrect . . . the de facto corporation doctrine” is misplaced. Utah’s Prefiling Activities statute would not have saved any of the transactions that were not recognized in the voluminous case law cited by La Jolla. First, in *American Vending Servs. v. Morse*, the parties attempting to pass liability under a purchase contract on to a corporation argued not that the corporation had signed the contract, but only that “they represented to [plaintiffs] that the corporate entity . . . would purchase and operate” a carwash. 881 P.2d 917, 918 (Utah Ct. App. 1994). The sellers received a down payment from the individuals, rather than the corporation, and the sellers never received any payments upon the balance of the

purchase price. *Id.* at 918 n. 4 and 919. Furthermore, it was unclear “whether the corporate entity” that the buyers claimed should be liable under the purchase contract “was intended to operate the carwash or to won or be related to the ongoing partnership business.” *Id.* at 918 n. 5.

In essence, the two individuals held to be personally liable under the purchase contract were not allowed to pass liability to their corporation based upon representations that they intended to organize a corporation and that they intended that the corporation was to be liable under the note. Furthermore, the Court of Appeals did not analyze whether or not such a purchase contract was an incidental transaction of business. The trial court made a determination that a de facto corporation existed, and the Court of Appeals rejected that determination.

The other Utah cases that La Jolla cites in support of its argument that the conveyance was a nullity because BRB – 5 did not exist on October 22, 1997 are also unavailing, for all of the cases are distinguishable on their facts and the law applied.⁴ In *Gillham Advertising Agency, Inc. v. Ipson*, the defendant was found liable for an obligation, despite his argument that the obligation was owed by a corporation, because the corporation never existed in Utah. 567 P.2d 163, 164-65. (Utah 1977). In *Loveridge v. Dreagoux*, the Tenth Circuit simply upheld the trial court’s ruling that defendants violated a statute “which specifically holds that persons who did what the defendants did

⁴ Appellees have reviewed the non-Utah case law and authorities cited by Appellants and, without specifically distinguishing each of the cases cited, simply declare that those citations suffer from the same lack of identity to the facts and law of this case as the Utah cases do.

are to be held jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.” 678 F.2d 870, 876 (10th Cir. 1982). In *Sharp v. Riekhoff*, the grantor transferred property to a trust, rather than to a trustee. 747 P.2d 1044, 1046 (Utah 1987). Because “trusts are property interests which cannot hold property,” rather than natural or artificial persons, the transfer was nullified. *Id.* In *Julian v. Petersen*, the attempted conveyance was to an individual that had already died, and “neither the estate nor the decedent is a legal entity.” 966 P.2d 878, 881 (Utah Ct. App. 1998). Finally, in *Kelly v. Hard Money Funding, Inc.*, the Court of Appeals simply acknowledged that neither party disputed that a grantee corporation “was an existing entity capable of holding title.” 2004 UT App 44, ¶ 23, n. 5, 87 P.3d 734.

The transfer of Pad A from IIP to BRB – 5 was a transaction that was wholly different from any of the transactions considered above. The Busches planned to transfer their properties from IIP to separate holding companies. In September, the Busches signed the Operating Agreement for BRB – 5 with the specific intention that BRB – 5 receive Pad A. Then, as an incident to the organization of BRB – 5, Barbara Busch, on behalf of IIP, signed the 1997 Quit Claim Deed on October 22, 1997. The Quit Claim Deed was then recorded on October 24, 1997, which was the same day that the Articles of Organization were filed with the Utah Department of Commerce. The conveyance was not relying upon de facto corporate status for its efficacy, but rather was *the* transaction of business that was incident to BRB – 5’s organization and purpose.

Utah’s rule against de facto corporations is not an issue. BRB – 5 has never claimed that it functioned as a de facto corporation, and the trial court did not rely upon

BRB – 5’s status as a de facto corporation when it found that the 1997 Quit Claim Deed was valid. The trial court’s finding and ruling should be affirmed.

B. BRB – 5’s suit to recover its property rights is a legitimate winding up activity.

Utah’s Limited Liability Company Act specifically states that “[d]issolution of a company does not[,]” among other things “transfer title to the company’s property” or “prevent commencement of a proceeding pending by or against the company in its company name.” Utah Code Ann. § 48-2c-1203(2). Once dissolved, a company may carry on business “appropriate to wind up . . . its business and affairs.” Utah Code Ann. § 48-2c-1203(1). In Utah, “[a] dissolved company in winding up has all powers of a company that is not dissolved,” however, “those powers may be used only for the purpose of winding up.” Utah Code Ann. § 48-2c-1302. This statute specifically states that these winding up powers “include . . . the power to . . . sue to collect amounts owed to the company and to *recover property* or rights belonging to the company” and to “initiate and defend claims in any proceeding.” *Id.* Under these statutes, BRB – 5 had full power to initiate this litigation and pursue its Petition to Nullify Wrongful Liens.

La Jolla’s reliance on *Diamond T. Developments, Inc. v. Brown*, 2008 UT App 435, Utah App. LEXIS 428, is misplaced, for that case is not controlling. In that case, Diamond T. Developments, Inc. “was involuntarily dissolved as a corporation in 1979” *Id.* at *1. Because the corporation had been dissolved in 1979, the Court of Appeals applied “the statutory scheme in place at the time of Diamond’s involuntary dissolution.” *Id.* That statute only allowed a dissolved entity to pursue “any remedy available to or against the corporation for any right or claim existing, or any liability incurred, prior to

such dissolution if action or other proceeding is commenced *within two years after the date of dissolution.*” *Id.* at *2 (emphasis added). This statute was repealed in 1992, however. *Id.* at *1. This statutory scheme was not in effect when BRB – 5 was formed or when BRB – 5 dissolved.

Currently, Utah’s winding up statute states that “[t]here is no fixed time period for completion of winding up a dissolved company except that the winding up should be completed within a reasonable time under the circumstances.” Utah Code Ann. § 48-2c-1301. Under this and the other above-cited statutes, BRB – 5 is statutorily permitted, as part of its winding up activities, to maintain a suit in its name to recover property or rights belonging to the company, to initiate claims in *any* proceeding, and to settle disputes by court action. There was no need for the Court to make factual findings as to whether BRB – 5’s suit was an appropriate winding up activity.⁵

III. FURTHER INQUIRY OR ANALYSIS REGARDING HALES’ APPARENT AUTHORITY OR THE VALIDITY OF THE 2007 QUIT CLAIM DEED WOULD HAVE ABSOLUTELY NO IMPACT UPON THE VALIDITY OF THE TRIAL COURT’S DECISION.

Once the trial court found that the 1997 Quit Claim Deed from IIP to BRB – 5 was a valid Quit Claim Deed, any further inquiry regarding Hales’ purported authority or the validity of the 2007 Quit Claim Deed because wholly irrelevant (and for that reason the trial court did not consider or rule upon those issues).⁶ The Court’s ruling that the 1997

⁵ During the hearing, Robert Busch testified that BRB – 5 had been dissolved and that BRB – 5 filed this case and appeared in court as part of its “winding up business.” (Tr. at 13-17.)

⁶ During the hearing, Appellees’ counsel objected to the relevance of any of the evidence presented by La Jolla regarding Hales’ apparent authority to act on behalf of IIP.

Quit Claim Deed was an effective deed meant that, as of October 22, 1997, IIP no longer had any interest in Pad A to give. Therefore, any subsequent analysis of whether or not Hales had the authority to transfer Pad A from IIP to Carlsbad Development or whether or not the 2007 Quit Claim Deed was valid would make no difference in the result of this case.

It is a well accepted maxim that a quit claim deed “gives only [the grantor’s] interest and implies nothing more.” *Wallace v. Build, Inc* , 402 P.2d 699, 701 (Utah 1965); *see Johnson v. Bell*, 666 P.2d 308, 312 (Utah 1983) (stating that “[a] grantee under a quit claim deed acquires only the interest of his grantor”). IIP had no interest in Pad A to transfer to Carlsbad Development, LLC in 2007. Even if Hales had authority to effect such a transfer, Carlsbad Development, LLC received only IIP’s interest in Pad A (i.e., nothing) through the 2007 Quit Claim Deed. Because Carlsbad Development, LLC received no actual interest in Pad A, it could not pledge any interest in Pad A to La Jolla, and La Jolla could not assert any interest in Pad A through Deeds of Trust executed by Carlsbad Development, LLC.

Hales could have executed 100 different quit claim deeds to 100 different grantees in 2007 in the furtherance of his plan to steal Pad A, and none of those quit claim deeds would have passed any interest on to the grantees. Even if he had IIP’s full authority to execute the 100 quit claim deeds, if all 100 quit claim deeds were executed after the 1997 Quit Claim Deed, all 100 quit claim deeds would have transferred no interest in Pad A to

Appellees’ counsel that that: “our position is that nothing after BRB – 5[] from Interstate Income Properties is relevant, and so I’ll just make that continuing objection so I don’t have to interrupt.” (Tr. at 41:2-4.)

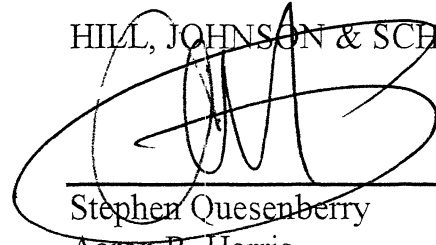
the grantees. All 100 quit claim deeds would have been valid, but all 100 quit claim deeds would have transferred nothing more than the nonexistent interest that IIP had in Pad A. The fact that BRB – 5 did not challenge Hales’ authority or press the trial court to make a ruling on that issue has no bearing on the trial court’s underlying decision—that the 1997 Quit Claim Deed was a valid, enforceable deed and that La Jolla’s Deeds of Trust, because they were not “signed by or authorized pursuant to a document signed by the owner of the real property,” were wrongful liens.

CONCLUSION

The trial court was correct when it nullified both of La Jolla’s Deeds of Trust and awarded Appellants their attorney’s fees and costs pursuant to Utah’s Wrongful Lien Statute. La Jolla failed to marshal the evidence, as required under this Court’s precedent, and therefore has not demonstrated that the trial court’s findings of fact were clearly erroneous. The trial court’s finding that the 1997 Quit Claim Deed was a valid deed that conveyed Pad A from IIP to BRB – 5 is amply supported by evidence heard at the hearing as well as applicable Utah law. Because this finding stands, this Court should affirm the trial court’s Order and Judgment in full. Furthermore, pursuant to the settled legal principle that “a party who received an award of attorney fees below is entitled to [its] fees on appeal,” Appellees request the fees they incurred in responding to Appellants’ appeal. *Glew v. Ohio Sav. Bank*, 2007 UT 56, 181 P.3d 791 (*see* Order Granting Attorney Fees on Appeal).

Respectfully submitted this 5th day of May 2010.

HILL, JOHNSON & SCHMUTZ, L.C.

A large, stylized handwritten signature in black ink, appearing to read 'SQ', is written over a horizontal line.

Stephen Quesenberry

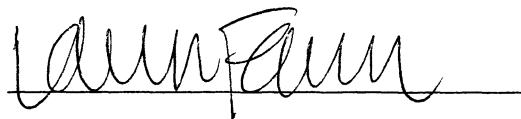
Aaron R. Harris

Attorneys for Petitioners/Appellants

PROOF OF SERVICE

I hereby certify that, on the 5th day of May 2010, two true and correct copies of the foregoing **BRIEF OF APPELLEES** were mailed via US Mail to the following:

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A handwritten signature in cursive script, appearing to read "Dawn Farn", is written over a horizontal line.

ADDENDA

ADDENDUM A

Materially Relevant Statutory Provisions

[Utah Code](#)

[Title 38 Liens](#)

[Chapter 9 Wrongful Liens and Wrongful Judgment Liens](#)

Section 1 Definitions.

38-9-1. Definitions.

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(b) "Record interest holder" includes any grantor in the chain of the title in certain real property.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(6) "Wrongful lien" means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

Amended by Chapter 69, 2009 General Session

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[<< Previous Section \(38-8-5\)](#) [Next Section \(38-9-2\) >>](#)

[Utah Code](#)

[Title 38 Liens](#)

[Chapter 9 Wrongful Liens and Wrongful Judgment Liens](#)

Section 4 Civil liability for filing wrongful lien -- Damages.

38-9-4. Civil liability for filing wrongful lien -- Damages.

(1) A lien claimant who records or files or causes a wrongful lien as defined in Section **38-9-1** to be recorded or filed in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien

(2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

(3) A person is liable to the record owner of real property for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or files or causes to be recorded or filed a wrongful lien as defined in Section **38-9-1** in the office of the county recorder against the real property, knowing or having reason to know that the document:

- (a) is a wrongful lien;
- (b) is groundless; or
- (c) contains a material misstatement or false claim.

Amended by Chapter 223, 2008 General Session

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[<< Previous Section \(38-9-3\)](#) [Next Section \(38-9-6\) >>](#)

Utah Code

[Title 38](#) Liens

[Chapter 9](#) Wrongful Liens and Wrongful Judgment Liens

Section 7 Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void

38-9-7. Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.

(1) Any record interest holder of real property against which a wrongful lien as defined in Section **38-9-1** has been recorded may petition the district court in the county in which the document was recorded for summary relief to nullify the lien

(2) The petition shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder

(3) (a) If the court finds the petition insufficient, it may dismiss the petition without a hearing

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process

(d) The lien claimant is entitled to attend and contest the petition

(4) A summary proceeding under this section is only to determine whether or not a document is a wrongful lien. The proceeding shall not determine any other property or legal rights of the parties nor restrict other legal remedies of any party

(5) (a) Following a hearing on the matter, if the court determines that the document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney's fees to the petitioner

(b) (i) The record interest holder may record a certified copy of the order with the county recorder

(ii) The order shall contain a legal description of the real property

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order

(6) If the district court determines that the lien is a wrongful lien as defined in Section **38-9-1**, the wrongful lien is void ab initio and provides no notice of claim or interest

(7) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section

Enacted by Chapter 125, 1997 General Session

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Title/Chapter/Section:

Go To

Utah Code

Title 57 Real Estate

Chapter 1 Conveyances

Section 13 Form of quitclaim deed -- Effect.

57-1-13. Form of quitclaim deed -- Effect.

Conveyances of land may also be substantially in the following form:

QUITCLAIM DEED

____ (here insert name), grantor, of ____ (insert place of residence), hereby quitclaims to ____ (insert name), grantee, of ____ (here insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this ____ (month\day\year).

A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance

Amended by Chapter 75, 2000 General Session

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Utah Code

[Title 48](#) Partnership

[Chapter 2c](#) Utah Revised Limited Liability Company Act

Section 404 Prefiling activities

48-2c-404. Prefiling activities.

A company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until its articles of organization have been filed with the division. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the company incurred on behalf of the company prior to the filing of its articles of organization with the division.

Enacted by Chapter 260, 2001 General Session

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[Utah Code](#)

[Title 48 Partnership](#)

[Chapter 2c Utah Revised Limited Liability Company Act](#)

Section 1203 Effect of dissolution.

48-2c-1203. Effect of dissolution.

(1) A dissolved company continues its existence but may not carry on any business or activities except as appropriate to wind up and liquidate its business and affairs, as provided in Part 13 of this chapter.

(2) Dissolution of a company does not:

- (a) transfer title to the company's property;
- (b) prevent transfer of an interest in the company;
- (c) subject its members or managers to standards of conduct different from those prescribed in Part 8;
- (d) change:
 - (i) limited liability provided under Part 6 of this chapter;
 - (ii) voting requirements for its members or managers;
 - (iii) provisions for selection, resignation, or removal of its managers; or
 - (iv) provisions for amending its articles of organization or operating agreement;
- (e) prevent commencement of a proceeding by or against the company in its company name;
- (f) abate or suspend a proceeding pending by or against the company on the effective date of dissolution; or
- (g) terminate the authority of the registered agent of the company.

Enacted by Chapter 260, 2001 General Session

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Title/Chapter/Section:

[Utah Code](#)

[Title 48](#) Partnership

[Chapter 2c](#) Utah Revised Limited Liability Company Act

Section 1301 Winding up defined.

48-2c-1301. Winding up defined.

The winding up of a dissolved company is the process consisting of collecting all amounts owed to the company, selling or otherwise disposing of the company's assets and property, paying or discharging the taxes, debts and liabilities of the company or making provision for the payment or discharge, and distributing all remaining company assets and property among the members of the company according to their interests. There is no fixed time period for completion of winding up a dissolved company except that the winding up should be completed within a reasonable time under the circumstances.

Enacted by Chapter 260, 2001 General Session

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Title/Chapter/Section:

Go To
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Utah Code

Title 48 Partnership

Chapter 2c Utah Revised Limited Liability Company Act

Section 1302 Powers of company in winding up.

48-2c-1302. Powers of company in winding up.

A dissolved company in winding up has all powers of a company that is not dissolved but those powers may be used only for the purpose of winding up and not for the carrying on of any business or activity other than that necessary for winding up. Those powers include, but are not limited to, the power to

- (1) continue the business of the company for the time reasonably necessary to obtain appropriate financial results for the members and creditors of the company;
- (2) hire and fire employees, agents, and service providers;
- (3) settle or compromise claims or debts owed to the company or claims brought against, or debts owed by, the company;
- (4) sell, exchange, or otherwise dispose of property of the company whether for cash or on terms,
- (5) convey and transfer property of the company;
- (6) sue to collect amounts owed to the company and to recover property or rights belonging to the company,
- (7) initiate and defend claims in any proceeding;
- (8) settle disputes by mediation, arbitration, or court action; and
- (9) perform every other act necessary to wind up and liquidate the business and affairs of the company.

Enacted by Chapter 260, 2001 General Session

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ADDENDUM B

Utah Session Laws: Chapter 176, Laws of Utah 1996

CHAPTER 176**S. B. 64**

Passed February 21, 1996

Approved March 12, 1996

Effective April 29, 1996

LIMITED LIABILITY COMPANIES

Sponsor Craig L. Taylor

AN ACT RELATING TO LIMITED LIABILITY COMPANIES; AMENDING DEFINITIONS; AMENDING FORMATION REQUIREMENTS; AMENDING REQUIREMENTS FOR MEMBERS; PROVIDING FOR WAIVER OF PROTECTION FROM LIABILITY; AMENDING SERVICE OF PROCESS PROVISIONS; AMENDING REQUIREMENTS FOR ARTICLES OF ORGANIZATION; AMENDING FILING REQUIREMENTS; AMENDING ANNUAL REPORT REQUIREMENTS; AMENDING WHEN ARTICLES OF INCORPORATION MUST BE AMENDED; AMENDING REGISTERED AGENT REQUIREMENTS; AMENDING PROVISIONS GOVERNING MANAGEMENT; PROVIDING INTEREST IN A LIMITED LIABILITY COMPANY IS PERSONAL PROPERTY; AMENDING EXECUTION PROCEDURES; AMENDING DISSOLUTION PROVISIONS; AMENDING REQUIREMENTS FOR FOREIGN LIMITED LIABILITY COMPANIES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 48-2b-102, as last amended by Chapter 240, Laws of Utah 1992
 48-2b-103, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-109, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-113, as last amended by Chapter 28, Laws of Utah 1995
 48-2b-116, as last amended by Chapter 168, Laws of Utah 1992
 48-2b-117, as last amended by Chapter 28, Laws of Utah 1995
 48-2b-118, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-120, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-121, as last amended by Chapter 168, Laws of Utah 1992
 48-2b-123, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-125, as last amended by Chapter 168, Laws of Utah 1992
 48-2b-131, as enacted by Chapter 258, Laws of Utah 1991
 48-2b-134, as last amended by Chapter 168, Laws of Utah 1992
 48-2b-137, as last amended by Chapter 168, Laws of Utah 1992
 48-2b-144, as enacted by Chapter 258, Laws of Utah 1991

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 48-2b-102 is amended to read:

48-2b-102. Definitions.

(1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.

(2) "Business" includes every trade, occupation, or profession

(3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.

(4) "Foreign limited liability company" means a limited liability company organized under the laws of any other jurisdiction

(5) "Limited liability company" or "company" means a business entity organized under this chapter.

(6) "Person" means an individual, general partnership, limited partnership, limited liability company, limited association, domestic or foreign trust, estate, association, or corporation

(7) "Professional services" means the personal services rendered by

(a) an architect holding a license under Title 58, Chapter 3, Architects Licensing Act, and any subsequent laws regulating the practice of architecture,

(b) an attorney granted the authority to practice law by the Supreme Court of the state of Utah as provided in Title 78, Chapter 51;

(c) a chiropractor holding a license under Title 58, Chapter 12, Part [7] 10, Chiropractic [Improvements] Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;

(d) a doctor of dentistry holding a license under Title 58, Chapter 7, Dentists and Dental Hygienists Act, and any subsequent laws regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 12, Part 3, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse [whose professional nursing license designates him as a nurse anesthetist pursuant to Subsection 58-31-9 1(1)] licensed under Title 58, Chapter 31, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry,

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 12, Part 1, Utah

Osteopathic Medicine Licensing Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 12, Part 5, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24a, Physical [Therapy] Therapist Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatrist holding a license under Title 58, Chapter [5] 5a, Podiatrist Licensing Act, and any subsequent laws regulating the practice of chiropody;

(n) a psychologist holding a license under Title 58, Chapter 25a, Psychologists' Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter [35] 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work; and

(r) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(8) "Regulating board" means the board organized pursuant to state law [which] that is charged with the licensing and regulation of the practice of the profession [which] that a limited liability company is organized to render.

(9) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(10) "Successor limited liability company" means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies.

Section 2. Section 48-2b-103 is amended to read:

48-2b-103. Formation.

~~[Two or more persons may form a]~~ (1) A limited liability company may be formed by ~~executing and~~ delivering to the division articles of organization for

the limited liability company meeting the requirements of Subsection (2)(a) and Section 48-2b-116 and executed as required by Section 48-2b-134. ~~[An interest of a member in a limited liability company is personal property.]~~

(2) (a) A limited liability company shall at formation of the limited liability company and at all times have at least two members.

(b) Any person may be a member of a limited liability company.

(c) Failure to maintain two members shall be an event of dissolution, subject to Section 48-2b-137.

Section 3. Section 48-2b-109 is amended to read:

48-2b-109. Liability of members, managers, and employees — Waiver.

(1) Except as otherwise specifically set forth in this chapter, neither the members, the managers, nor the employees of a limited liability company are personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company

(2) (a) A member of a limited liability company may waive the protection against personal liability of this section for the debts, obligations, or liabilities of a limited liability company by executing a waiver in the articles of organization or certificate of amendment of the articles of organization. The member waiving protection from liability shall execute the waiver

(b) The extent of the waiver is determined by the executed waiver in the articles of organization or certificate of amendment.

Section 4. Section 48-2b-113 is amended to read:

48-2b-113. Service of process, notice, or demand.

(1) Process against a limited liability company may be served:

(a) in accordance with Title 16, Chapter 10a, Utah Revised Business Corporation Act, as if the company were a corporation; or

(b) upon the registered agent ~~[at the business address of the registered agent]~~.

(2) (a) ~~[Any notice to or demand]~~ Service on a company organized under this chapter may be made:

~~[(a)]~~ (i) by delivery to:

~~[(4)]~~ (A) a manager of the company if management is vested in a manager; or

~~[(4)]~~ (B) any member if management is vested in the members; or

~~[(b)]~~ (ii) by writing, which shall be mailed by registered or certified mail to the registered office of the company in this state or to another address ~~[in this state that is the principal office of the company.]~~

for the company listed in the most recent annual report or other document on file with the division.

(b) Service is perfected under Subsection (2)(a)(ii) on the earliest of:

(i) the date the company receives the process;

(ii) the date shown on the return receipt, if signed on behalf of the limited liability company; or

(iii) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a limited liability company.

~~[(4) (a) If a limited liability company fails to appoint or maintain a registered agent in this state, or if its registered agent cannot with reasonable diligence be found at the registered office, then the division is the agent of the liability company upon whom any process, notice, or demand may be served.]~~

~~[(b) Service on the division of any process, notice, or demand shall be made by delivering to and leaving with the division an original and one copy of the process, notice, or demand, together with any fee required by the division under Section 63-38-3.2.]~~

~~[(c) If any process, notice, or demand is served on the division, it shall immediately cause one of the copies to be forwarded, by registered or certified mail, addressed to the limited liability company at its registered office.]~~

~~[(d) Service upon the division is not returnable in less than 30 days.]~~

Section 5. Section 48-2b-116 is amended to read:

48-2b-116. Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) the name of the limited liability company;

(b) the period of its duration which shall not exceed 99 years from the date of filing with the division;

(c) the business purpose or purposes for which the limited liability company is organized;

(d) the street address of its registered office in the state (and);

(e) the name ~~(street address)~~ and signature of its initial registered agent ~~(in the state)~~ at that address, as required by Section 48-2b-123;

~~[(e) a statement that the division is appointed the agent of the limited liability company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;]~~

(f) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of the managers who are to serve until the first meeting of members or until their successors are elected;

(g) if the management of a limited liability company is reserved to the members, the names and street addresses of the members; and

(h) any other provision, not inconsistent with law, that the members choose to include in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provision that is required or permitted to be included in the operating agreement of the limited liability company under this chapter.

(2) It is not necessary to include in the articles of organization any of the powers enumerated in this chapter.

Section 6. Section 48-2b-117 is amended to read:

48-2b-117. Filing of articles.

(1) ~~[An original and one copy]~~ (a) Two copies of the articles of organization and of any certificates of amendment, or of any judicial decree of amendment, shall be delivered to the division. The documents to be filed shall be executed as provided in Section 48-2b-134, or be true copies made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been properly executed.

(b) A person who executes articles of organization or a certificate of amendment as an attorney-in-fact or fiduciary need not exhibit evidence of [his] the person's authority as a prerequisite to filing.

(c) Unless it finds that the articles of organization or certificate of amendments do not conform to law as to their form, the division, upon receipt of all filing fees established under Section 63-38-3.2, shall:

~~[(a)]~~ (i) place a stamp or seal on ~~(the original and the copy)~~ both copies, indicating the time, day, month, and year of the filing, the name of the division, the signature of the division director, and the division's seal, or facsimiles of them;

~~[(b)]~~ (ii) file ~~(the signed original)~~ one copy in its office; and

~~[(c)]~~ (iii) return the ~~(stamped)~~ second copy to the person who filed it or as directed by the person who filed it.

(2) Upon the filing with the division of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment, and upon the effective date of a certificate of dissolution or of a judicial decree of cancellation, the articles of organization shall be canceled.

Section 7. Section 48-2b-118 is amended to read:

48-2b-118. Effect of filing — Prefiling activities.

(1) Upon the placement of a stamp or seal, as provided in Subsection 48-2b-117 (1)(a), on the articles of organization, the limited liability company shall be considered organized.

(2) Except as against the state of Utah in a proceeding to cancel or revoke the certificate of organization or in a proceeding for involuntary dissolution of the limited liability company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this chapter.

(3) A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the division. Persons engaged in prefiling activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the limited liability company prior to the filing of its articles of organization with the division.

Section 8. Section 48-2b-120 is amended to read:

48-2b-120. Annual report.

(1) Each limited liability company and each foreign limited liability company authorized to transact business in this state shall file with the division, during the month of its anniversary date of formation, in the case of domestic limited liability companies, or during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited liability companies authorized to transact business in this state, an annual report setting forth:

(a) the name of the limited liability company and the state or country under the laws of which it is formed;

(b) the street address of the registered office and the name ~~(and street address)~~ of the agent for service of process at that address, as required to be maintained under Section 48-2b-123; ~~(and)~~

(c) if there is a change of the registered agent required to be maintained by Section 48-2b-123(1);

(d) if the street address or legal name of any manager or member with management authority named in the articles of organization, as amended, of a domestic limited liability company, or named in the application for the registration of a foreign limited liability company, has changed, the new

street address or legal name of the member or manager; and

(e) any change in the persons constituting the managers or members with management authority, of a foreign limited liability company.

(2) A change in the person constituting the managers, or members with management authority, of a domestic limited liability company shall be reflected in amended articles of organization, as provided in Section 48-2b-121.

~~[(2)]~~(3) The annual report shall be made on forms prescribed and furnished by the division, and the information contained on the annual report shall be given as of the date of execution of the report. The annual report forms shall include a statement notifying the limited liability company that failure to file the annual report will result in the suspension and eventual cancellation of its certificate of organization, in the case of a domestic limited liability company, or of its registration, in the case of a foreign limited liability company authorized to transact business in this state.

~~[(3)]~~(4) The annual report shall be signed by any manager or member ~~(under penalty of perjury)~~ with management authority. If the registered agent has changed since the last annual report, the annual report shall also be signed by the new registered agent.

~~[(4)]~~ (5) If the report conforms to the requirements of this chapter, the division shall file the report. If the report does not conform, the division shall mail the report first class postage prepaid to the limited liability company at the street address set forth for its agent for service of process in the certificate of organization or most recent report, for any necessary corrections. If a report is returned, the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited liability company.

Section 9. Section 48-2b-121 is amended to read:

48-2b-121. When amendments required.

(1) The articles of organization of a limited liability company shall be amended when:

(a) there is a change in the name of the limited liability company;

(b) there is a change in the character of the business of the limited liability company specified in the articles of organization;

(c) there is a false or erroneous statement in the articles of organization;

(d) there is a change in the time, as stated in the articles of organization, for the dissolution of the limited liability company;

(e) there is a change in ~~(the names and street addresses of the managers)~~ who is a manager of the limited liability company or, if the limited liability

company is managed by its members, ~~(the names and street addresses of the members)~~ a change in who is a member of the limited liability company;

(f) the members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the limited liability company; or

(g) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among them.

(2) Each limited liability company shall file with the division a copy of any amendment to the articles within 60 days after the adoption of the amendment.

Section 10. Section 48-2b-123 is amended to read:

48-2b-123. Registered agent.

(1) (a) Each domestic limited liability company and each foreign limited liability company authorized to do business in this state shall continuously maintain an agent in this state for service of process on the limited liability company.

(b) The street address of the registered agent shall be the same as the registered office of the limited liability company.

(2) ~~(This) (a) The agent shall be (an individual) a person residing or authorized to do business in this state (a domestic corporation, a foreign corporation authorized to do business in this state, or any member of the limited liability company).~~

(b) A limited liability company may not serve as its own registered agent.

(3) Failure to maintain a registered agent or registered office in this state shall be grounds for involuntary dissolution of the limited liability company by the division under Section 48-2b-142.

(4) The registered agent of a limited liability company may resign by filing an original and one copy of a signed written notice of resignation with the division. The division shall then mail a copy of the notice of resignation to the registered office of the limited liability company at the street address set forth in the limited liability company's articles of organization. The appointment of the registered agent ends 30 days after the division receives notice of the resignation.

Section 11. Section 48-2b-125 is amended to read:

48-2b-125. Management.

(1) (a) The management of the limited liability company, unless otherwise provided in the articles of organization, shall be vested in its members in proportion to their interests in the profits of the limited liability company, as reflected in the operating agreement and as adjusted from time to time to properly reflect any additional

contributions or withdrawals by the members or as provided in Section 48-2b-130.

(b) If the management of the limited liability company is vested in the members, any member has authority to bind the limited liability company, unless otherwise provided in the articles of organization or operating agreement.

(2) (a) If the articles of organization provide for the management of the limited liability company by a manager or managers, the manager or managers shall be any person elected by the members in the manner prescribed by and provided in the operating agreement of the limited liability company. A manager need not be a member unless required by the articles of organization or operating agreement.

(b) If the management of the limited liability company is vested in a manager or managers, any manager has authority to bind the limited liability company, unless otherwise provided in the articles of organization or operating agreement. A manager shall serve for a term specified in the operating agreement. This term may not exceed the duration of the limited liability company as specified in the articles of organization.

(3) The manager or managers shall (also) hold the offices and have the responsibilities accorded to them by the members and as provided for in the operating agreement of the limited liability company.

Section 12. Section 48-2b-131 is amended to read:

48-2b-131. Character, transfer, adjustment, and assignment of member interests — Effect.

(1) An interest of a member in a limited liability company is personal property.

~~[(1)]~~ (2) An interest of a member in a limited liability company may be adjusted, transferred, or assigned as provided in the operating agreement. [However, if] If the nontransferring members entitled to receive a majority of the nontransferred profits of the limited liability company, pursuant to Section 48-2b-130, do not consent to the proposed transfer or assignment[.];

(a) the transferee of the interest of the member has no right to participate in the management of the business and affairs of the limited liability company, or to become a member[—in that event.]; and

(b) the transferee is entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

~~[(2)]~~ (3) A member of a limited liability company organized to render professional services may voluntarily transfer [his—shares] the member's interest in a limited liability company only to a person who is licensed or registered by the jurisdiction in which the person resides to render the same type of professional services as those for which the company was organized.

(4) Any transfer of a member's interest in a limited liability company in violation of this section is void

Section 13. Section 48-2b-134 is amended to read:

48-2b-134. Execution of documents.

(1) Unless otherwise specified in this chapter, each certificate or report required by this chapter to be filed with the division shall be executed in the following manner

(a) articles of organization shall be signed by [two members or two managers] at least one manager or, if the limited liability company is managed by its members, by at least one member;

(b) [the] a certificate of amendment shall be signed [under penalty of perjury] by at least one manager or one member [as authorized pursuant to] with management authority, subject to any restriction or requirement in the operating agreement, and by each other member designated in the certificate of amendment as a new member;

(c) the annual report shall be signed [under penalty of perjury] by at least one manager or one member [as authorized pursuant to] with management authority subject to any restriction or requirement in the operating agreement, and, if the registered agent has changed subsequent to the filing of the articles of organization or the last annual report, by the registered agent, and

(d) articles of dissolution shall be signed [under penalty of perjury] by at least one manager or one member [as authorized pursuant to] with management authority subject to any restriction or requirement in the operating agreement

(2) Any person may sign any certificate or articles by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a member shall specify the admission of the member. Powers of attorney relating to the signing of a certificate by an attorney-in-fact need not be filed with the division but shall be retained by the company

(3) The execution of articles of organization [or], dissolution [or], of a certificate of amendment [by a member], or of an annual report constitutes an oath or affirmation by the person executing the document, under the penalties of perjury, that the facts stated in the articles or certificate are true and that any power of attorney used in connection with the execution of the articles or certificate is proper in form and substance.

Section 14. Section 48-2b-137 is amended to read:

48-2b-137. Dissolution.

A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the limited liability company in its articles of organization or operating agreement expires;

(2) when the limited liability company fails to meet the requirement to maintain at least two members, unless within 90 days after the event of dissolution a member is added, in a manner consistent with the operating agreement, if any, of the limited liability company, so that the limited liability company meets the minimum membership requirement;

[(2)] (3) by written agreement signed by the members entitled to receive a majority of the profits of the limited liability company, unless otherwise provided in the operating agreement,

[(3)] (4) except as provided otherwise in the operating agreement, upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or upon the occurrence of any other event that terminates the continued eligibility for membership of a member in the limited liability company, unless the business of the limited liability company is continued by the members

(a) under a right to continue the business, as provided in the operating agreement, but only in accordance with the terms, conditions, and provisions specified in the operating agreement, or

(b) if the right to continue is not specified in the operating agreement, by the consent of all remaining members within 90 days after the event of termination] dissolution, or

[(4)] (5) when the limited liability company is not the successor limited liability company in the merger or consolidation of two or more limited liability companies

Section 15. Section 48-2b-144 is amended to read:

48-2b-144. Registration of foreign limited liability companies.

(1) Before doing business in this state, a foreign limited liability company shall register with the division by submitting to the division

(a) the fee required by this chapter;

(b) an original certificate of fact or good standing from the office of the secretary of state or other responsible authority of the home state of the foreign limited liability company, and

(c) an original copy executed by a member, together with a duplicate copy, of an application for registration as a foreign limited liability company, setting forth:

(i) the name of the foreign limited liability company and, if that name is not available in this state, the name under which it proposes to register and transact business in this state,

(ii) the state or other jurisdiction or country where organized and the date of its organization,

(iii) the nature of the business or purposes to be conducted or promoted in the state of Utah,

(iv) the street address of the registered office in this state and the name [and street address] of the registered agent for service of process at the registered office as required by Section 48-2b-123;

(v) an irrevocable written consent of the foreign limited liability company that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on its registered agent, and if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found, then on the director of the division, and stipulating and agreeing that this service shall be taken and held, in all courts, to be as valid and binding as if service had been made upon the members of the foreign limited liability company;

(vi) if the foreign limited liability company is managed by one or more managers, a statement that the company is managed in that fashion and the name and business or residence street address of each managers then serving;

~~[(vi)]~~ (vii) if the management of the foreign limited liability company is reserved to its members, the name and business or residence street address of each of the members; and

~~[(vii)]~~ (viii) the date on which the foreign limited liability company first intends to do business in the state [of Utah].

(2) If any statement in the application for registration 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 division a certificate, executed by a member, correcting the statement, together with payment of any fee required by this chapter.