

# Transactions with LLC's and Religious Institutions

and

## Legislative Update

Samuel H. Givhan

Lanier, Ford, Shaver & Payne, P.C.

Huntsville, Alabama

In the course of real estate practice, one encounters a variety of business entities holding title to property. This presentation does not attempt to cover all legal entities addressed in the Alabama Business and Nonprofit Entity Code (the “Code”), as the scope is limited to transactions with limited liability companies and religious institutions. It further briefly addresses some legislative highlights relating to matters that may be relevant to the audience.

### I. Limited Liability Companies.

Since coming onto the scene in 1993, limited liability companies, or LLC's, seem to have become the predominant business entity for real estate ownership since LLC's allow for much more flexibility of the owners in terms of governance and taxation. The original law was drastically amended by the Alabama Limited Liability Company Act of 2014 (the “LLC Act”), which was effective January 1, 2015, for new LLCs and on January 1, 2017 for all LLCs. Recall, in addition to the LLC Act, LLC's and many other entities (including non-profit corporations, unincorporated associations and Church corporations) are governed by the “Hub” provisions of § 10A-1-1.01 *et. seq.*, except as otherwise provided. In the event there is a conflict between the Hub and the LLC Act, then the provisions of the LLC Act (or other applicable act) will prevail.

Part of the beauty of LLCs is set out in 1.06 of the LLC Act in stating the policy “to give maximum effect to the principles of freedom of contract and to the enforceability of [LLC] company agreements.”

§ 10A-5A-1.04. Powers and privileges.

(a) A limited liability company is a separate legal entity. A limited liability company’s status for tax purposes shall not affect its status as a separate legal entity formed under this chapter.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted and enumerated by Chapter 1 or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including those powers and privileges necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities and affairs of the limited liability company.

(c) A limited liability company may carry on any lawful activity, whether or not for profit.

**(d) A series established under this chapter has the power and capacity, in the series’ own name, to:**

(1) sue and be sued;

(2) contract;

**(3) hold and convey title to assets of the series, including real property, personal property, and intangible property; and**

**(4) grant liens and security interests in assets of the series.**

§ 10A-5A-1.08. Limited liability **company agreement** -- Scope; function; limitations.

**(a) Except as otherwise provided in subsections (b) and (c):**

**(1) the limited liability company agreement governs relations among the members as members and between the members and the limited liability company; and**

(2) **to the extent the limited liability company agreement does not otherwise provide for a matter described in subsection (a)(1), this chapter governs the matter.**

(b)(1) **To the extent that, at law or in equity, a member or other person has duties, including fiduciary duties, to the limited liability company, or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or other person's duties may be expanded or restricted or eliminated by a written limited liability company agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated.**

(2) **A written limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary duties, of a member or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, but a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.**

(3) A member or other person shall not be liable to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the limited liability company agreement.

(4) A limited liability company agreement may provide any or all of the following:

(A) a member, dissociated member, or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to **specified penalties** or specified consequences;

(B) at the time or upon the happening of events specified in the limited liability company agreement, a member, dissociated member, or transferee may be subject to specified penalties or specified consequences; and

(C) subject to Section **10A-5A-1.08(c)**, an **act or transaction** under the limited liability company agreement by the limited liability company, a member, dissociated member, or transferee is **void or voidable**.

(5) **A penalty or consequence** that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting member's or transferee's proportionate interest in a limited liability company, subordinating the member's or transferee's

transferable interest to that of non-defaulting members or transferees, forcing a sale of that transferable interest, forfeiting the defaulting member's or transferee's transferable interest, the lending by other members or transferees of the amount necessary to meet the defaulting member's or transferee's commitment, a fixing of the value of the defaulting member's or transferee's transferable interest by appraisal or by formula and redemption or sale of the transferable interest at that value, or other penalty or consequence.

(6) A written limited liability company agreement may supersede, in whole or in part, the provisions of Division C of Article 3 of Chapter 1.

**(c) A limited liability company agreement may not:**

(1) vary the nature of the limited liability company as a separate legal entity under [Section 10A-5A-1.04\(a\)](#);

(2) vary the law applicable under [Section 10A-5A-1.05](#);

(3) restrict the rights under this chapter of a person other than a member, dissociated member, or transferee;

(4) vary the power of the court under [Section 10A-5A-2.05](#);

(5) eliminate the implied contractual covenant of good faith and fair dealing as provided under [Section 10A-5A-1.08\(b\)\(1\)](#);

(6) eliminate or limit the liability of a member or other person for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing as provided under [Section 10A-5A-1.08\(b\)\(2\)](#);

(7) waive the requirements of [Section 10A-5A-4.04\(c\)](#);

(8) vary the law applicable under [Section 10A-5A-4.06\(c\)](#);

(9) reduce the limitations period specified under [Section 10A-5A-4.06\(d\)](#) for an action commenced under other applicable law;

(10) waive the prohibition on issuance of a certificate of a transferable interest in bearer form under [Section 10A-5A-5.02\(c\)](#);

- (11) vary the power of a court to decree dissolution in the circumstances specified in [Section 10A-5A-7.01\(d\)](#) or in [Section 10A-5A-11.09\(e\)](#);
- (12) vary the requirement to wind up a limited liability company's activities and affairs as specified in [Section 10A-5A-7.02\(a\)](#);
- (13) vary the provisions of [Section 10A-5A-8.01](#);
- (14) vary the right of a member under [Section 10A-5A-10.09](#);
- (15) waive the requirements of [Section 10A-5A-11.02\(b\)](#); or
- (16) vary the provisions of [Section 10A-5A-1.11\(c\)](#), (d), or (e).

§ 10A-5A-1.10. Limited liability company agreement -- Effect on third parties and relationship to writings effective on behalf of limited liability company.

(a) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended.

**(b) A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth in the limited liability company agreement.**

(c) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the limited liability company agreement. A transferee and a dissociated member are bound by the limited liability company agreement.

**(d) If a writing that has been delivered by a limited liability company for filing in accordance with Chapter 1 and has become effective conflicts with a provision of the limited liability company agreement:**

**(1) The limited liability company agreement prevails as to members, dissociated members, and transferees; and**

**(2) The writing prevails as to other persons to the extent they reasonably rely on the writing.**

§ 10A-5A-3.01. Liability of members to third parties.

**A member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof,** whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof.

A number of previously existing corporations have been converted to become LLC's, although they might still be treated for tax purposes as either C or Subchapter S corporations from a tax standpoint as opposed to the default partnership/disregarded entity status. The increase in governance options can often drag along unwanted baggage when the underlying constituent documents, the certificate of formation and operating agreement, are incomplete, inconsistent or utilize atypical and/or erroneous references.

§ 10A-5A-1.07. Application of partnership provisions to limited liability companies; classification for federal income tax purposes

(a) The terms “partnership” and “limited partnership,” when used in any chapter or title other than the Alabama Limited Liability Company Law of 2014, the Alabama General Partnership Law, and the Alabama Limited Partnership Law, and any successors of those laws, include a limited liability company organized under this chapter, unless the context requires otherwise.

(b) Notwithstanding subsection (a), **for purposes of taxation, other than Chapter 14A of Title 40, a limited liability company** or foreign limited liability company **shall be treated as a partnership unless it is classified otherwise for federal income tax purposes**, in which case it shall be classified in the same manner as it is for federal income tax purposes.

Some limited liability company constituent documents reference officers typically associated with corporations. While “CEO” and “President” may sound more impressive than “Sole Member” or “Manager”, corporate titles carry no presumption of authority and should be supplemented with the correct reference or accompany an appropriate resolution for recordation. The terms “president”, “vice president”, “secretary”, and “treasurer” used in the Hub have no application to LLCs.

As much as I don’t personally like the advice an underwriter once gave regarding Operating Agreements, n/k/a Company Agreements, he was right. Read everything. Unless the operating agreement or a proper resolution spells out the power, no one has presumptive power to act for the LLC. I do read this to say that giving clear authority to a manager in the Company Agreement does not require a specific resolution, but I generally procure one other than for selling lots in a residential subdivision in the ordinary course of business. Authority to act is set out below:

§ 10A-5A-3.02. Power to bind limited liability company.

No person shall have the power to bind the limited liability company, or a series thereof, except:

**(a) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof under or pursuant to the limited liability company agreement;**

**(b) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof in accordance with Sections 10A-5A-4.07, 10A-5A-7.03 [Right to wind up activities and affairs], or 10A-5A-11.11 [Right to wind up activities and affairs of a series]; or**

**(c) to the extent provided by law other than this chapter.**

§ 10A-5A-4.07. Direction and oversight of the limited liability company.

**(a) The limited liability company agreement of a limited liability company may provide that the**

**activities and affairs of the limited liability company shall be under the direction, and subject to the oversight, of: (1) its members; (2) one or more managers; or (3) such other governance structure as provided in the limited liability company agreement.** The limited liability company agreement of a limited liability company may provide that the activities and affairs of a series shall be under the direction, and subject to the oversight, of: (1) the **members associated with that series; (2) one or more managers; or (3) such other governance structure as provided in the limited liability company agreement.**

**(b) If the limited liability company agreement does not specify who shall direct and oversee the activities and affairs of the limited liability company or a series thereof:**

(1)(A) The activities and affairs of the limited liability company shall be under the direction, and subject to the oversight, of **its members.**

(B) The activities and affairs of a series shall be under the direction, and subject to the oversight, of the **members associated with the series.**

**(C) Subsection (b)(1)(A) shall not apply to the activities and affairs of a series.**

(2)(A) Except as provided in subsection (b)(3), a matter in the ordinary course of activities and affairs of the limited liability company may be decided by a **majority of the members.**

(B) Except as provided in subsection (b)(3), a matter in the ordinary course of activities and affairs of a series may be decided by a majority of the members associated with the series.

(C) Subsection (b)(2)(A) shall not apply to matters of a series.

**(3)(A) The consent of all members is required to:**

(i) amend the limited liability company agreement;

(ii) file a petition of the limited liability company for relief under Title 11 of the United States Code, or a successor statute of general application, or a comparable federal, state, or foreign law governing insolvency;

(iii) undertake any act **outside the ordinary course** of the limited liability company's activities and affairs; and



(iv) undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all members.

(B) The consent of all members associated with a series is required to:

(i) undertake any act outside the ordinary course of the series' activities and affairs; and

(ii) undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all the members associated with a series.

(c) Any matter requiring the consent of members may be decided **without a meeting**, and a **member may appoint a proxy** or other agent to consent or otherwise act for the member by signing an **appointing writing**, personally or by the member's agent.

(d) **This chapter does not entitle a member to remuneration for services performed for a limited liability company**, except for reasonable compensation for services rendered in winding up the activities and affairs of the limited liability company.

I searched Westlaw and found no other reference in the Code to "appointing writing".

#### § 10A-5A-4.08. Duties of persons with direction and oversight.

(a)(1) The duties a person who has the authority to direct and oversee the activities and affairs of a limited liability company owes to the limited liability company and to the members of the limited liability company include the duty of loyalty and the duty of care as described in subsections (b) and (d)(1).

(2) The duties a person who has the authority to direct and oversee the activities and affairs of a series of a limited liability company owes to that series and the members associated with that series include the duty of loyalty and the duty of care as described in subsections (c) and (d)(2).

(b) The duty of loyalty of a person described in subsection (a)(1) to a limited liability company and its members includes each of the following:

(1) To account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by that person in the conduct or winding up of the limited liability company's activities and affairs or derived from a use by that person of the limited liability company's property, including the appropriation of the limited liability company's opportunity.

(2) To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a party having an interest adverse to the limited liability company.

(3) To refrain from competing with the limited liability company in the conduct of the limited liability company's activities and affairs before the dissolution of the limited liability company.

(c) The duty of loyalty of a person described in subsection (a)(2) to a series of a limited liability company and the members associated with that series includes each of the following:

(1) To account to the series and to hold as trustee for it any property, profit, or benefit derived by that person in the conduct or winding up of the series' activities and affairs or derived from a use by that person of the series' property, including the appropriation of the series' opportunity.

(2) To refrain from dealing with the series in the conduct or winding up of the series' activities and affairs as or on behalf of a party having an interest adverse to the series.

(3) To refrain from competing with the series in the conduct of the series' activities and affairs before the dissolution of the series.

(d)(1) The duty of care of a person described in subsection (a)(1) to a limited liability company and its members in the conduct or winding up of the limited liability company's activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(2) The duty of care of a person described in subsection (a)(2) to a series of a limited liability company and the members associated with that series in the conduct or winding up of that series' activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(e)(1) A person described in subsection (a)(1) shall discharge the duties to a limited liability company and its members under this chapter and under the limited liability company agreement and exercise any rights consistently with the implied contractual covenant of good faith and fair dealing.

(2) A person described in subsection (a)(2) shall discharge the duties to a series of a limited liability company and the members associated with that series under this chapter and under the

limited liability company agreement and exercise any rights consistently with the implied contractual covenant of good faith and fair dealing.

(f) A person described in subsection (a) does not violate a duty or obligation under this chapter or under the limited liability company agreement merely because that person's conduct furthers that person's own interest.

(g)(1) Other than the implied contractual covenant of good faith and fair dealing, the only duty a member who does not have the authority to direct and oversee the activities and affairs of a limited liability company owes to a limited liability company or to the other members solely by reason of being a member is to not disclose or otherwise use information of the limited liability company to the detriment of the limited liability company or the other members.

(2) Other than the implied contractual covenant of good faith and fair dealing, the only duty a member associated with a series who does not have the authority to direct and oversee the activities and affairs of that series owes to that series or to the other members associated with that series solely by reason of being a member associated with that series is to not disclose or otherwise use information of that series to the detriment of that series or the other members associated with that series.

(h) When the authority of a person to direct and oversee the activities and affairs of a limited liability company is terminated, each of the following applies:

(1) Except as provided in subsection (h)(2), the person's duties terminate.

(2) The person's duties continue only with regard to matters arising and events occurring before the termination of the person's authority.

(i) When the authority of a person to direct and oversee the activities and affairs of a series of a limited liability company is terminated, each of the following applies:

(1) Except as provided in subsection (i)(2), the person's duties terminate.

(2) The person's duties continue only with regard to matters arising and events occurring before the termination of the person's authority.

Section 10A-5A-11.02 addresses the enforceability of obligations and expenses of series against assets. If the provisions of Subsection b are complied with then, generally, the liability of a series can only be collected against the assets of that series.

Accordingly, when handling a transaction involving an LLC the initial task is to obtain and review the certificate of formation (or articles of organization for older entities) and the operating agreement. Many single member LLC's do not have an operating agreement, as the sole member would simply be having an agreement with him/her/itself. As a matter of practice when organizing LLC's, I suggest that the client have a simple operating agreement in place because if they go to a bank to borrow money the lender will generally want to "check the box" and note that a copy of the agreement is in their loan file. In cases where no operating agreement is on hand, I generally obtain a simple written consent and a certificate of incumbency at closing. If the transaction involves a series, then the company documents should be reviewed for compliance with 10A-5A-11.02; one should confirm that title was recorded by deed into a valid and identifiable series; and contact your underwriter if there is any doubt as to the validity of the series.

In the course of proceeding toward closing, one should obtain a certificate of good standing from the Alabama Department of Revenue. All signatures on instruments and in the notary acknowledgments should properly reflect the authority or capacity of the signatory. Any company property should be conveyed or mortgaged in the same manner in which title was acquired. When practical, it is the best practice to obtain a certificate of incumbency and a unanimous written consent of members and managers before closing real property transactions involving LLC's.

## II. Religious Institutions.

The requirements for handling real estate transactions involving religious institutions are almost as varied as the types and specific denominations of religious institutions that are located within the State of Alabama. I will broadly reference religious institutions as “Churches”, even though several faiths have differing references for their houses/bodies of worship.

The beginning point for evaluating how to handle a Church transaction is to request copies of its governing documents, which may exceed customary articles of incorporation and bylaws (assuming these are in existence AND can be located). It is important to determine all of the governing documents as the requirements should be strictly followed. The governing documents, if any, should enable you to determine the actual type of corporate entity the Church is deemed to be the provisions of the Code. I have handled transactions involving Churches that were set up as Nonprofit Corporations, Special Purpose Entities established under §§ 10A-20-1.01, *et. seq.*, and those that were not formally established at all, thereby falling under the Unincorporated Nonprofit Association provisions set out in the Code in §10A-17-1.01, *et. seq.*

### A. Corporation Sole.

The easiest Church properties to handle are those owned by the Catholic Church as each of the Bishops (the Bishop of Birmingham and the Bishop of Mobile) constitutes a Corporation Sole and properly prepared powers of attorney are of record authorizing various Church officials to convey Church property.

## B. Church Corporations.

Many of the major denominations have unique governing documents that this paper will not address. From a pure number perspective (of churches, not total membership), this writer would assert that the majority of Churches in Alabama are established as autonomous congregational Churches organized under § 10A-20-2.01 of the Code. The provisions relative to real property, with certain emphasis added, are as follows:

### § 10A-20-2.03. Independence of church corporations in control of real property.

(a) Unless otherwise clearly stated in the deed or other instrument under which any church corporation organized under this article derives title or unless afterwards approved by a majority of the adult members of the congregation of the church at a meeting held after announcement from the pulpit of the church at least seven days from the date of the announcement, the church corporation, whether heretofore or hereafter organized and incorporated under this article, shall be, and shall remain, a distinct and independent church corporation free from the regulation and control of any higher church body, denomination, or other organization with which it is now, or hereafter, associated or affiliated insofar as the management, control, disposition, or alienation of its real property is concerned.

(b) The provisions of this section shall in nowise be construed as conferring on any church organized under this article greater power of control over its real property than it possessed prior to its passage nor shall this section be construed as diminishing in any respect the control or supervision of the real property of the church organized under this article exercised by any higher church body, denomination, or other organization prior to its passage.

### § 10A-20-2.05. Borrowing of money and securing same by mortgage or deed of trust.

The trustees, or a majority of them, or authorized agents of any church, conference of churches, societies, or associations organized by special charter or under the general laws of this state, may borrow money to an amount as may be authorized by a majority of the trustees or authorized agents and may, by mortgage or deed of trust, convey all or any part of the property owned, real or personal, or both, to secure the payment of any debt contracted by the trustees or authorized agents; **but before the mortgage or deed of trust can be executed, a majority of the board of trustees or authorized agents shall have first authorized the incurring of the debt and the execution of the mortgage or deed of trust on all or part of the real or personal property, or both, of the church, conference of churches, society, or association, which authorization must be made at a meeting of the board of trustees or authorized agents specifically called for the purpose.** Any church, conference of churches, society, or association may grant to its board of trustees or authorized agents the power to convey by mortgage or deed of trust any or all of its property, real

or personal, it may then own or may thereafter acquire for the purpose of securing any debt contracted by the board of trustees. **A certified copy of the minutes of the church**, conference of churches, society, or association, or of the board of trustees or authorized agents, **shall be prima facie evidence of the authority of the board of trustees or authorized agents.**

§ 10A-20-2.06. Sale and conveyance of property.

**The trustees or other authorized agents of any church**, conference of churches, society, association, or other corporation organized under this article **may sell and convey** all or part of the property thereof, real or personal, **as they may be authorized to do by resolution of the church**, conference of churches, society, association, or other corporation **assembled at a regular meeting or special meeting. If a special meeting, notice of the time, place, and object of the meeting must be given at least 10 days prior to the special meeting by posting notice at the place of regular meetings.**

It is important to insure that real property transactions for Churches comply with the provisions of the Code and their various governing documents, which need to be consistent. My experience with congregational Churches (which is the type of church I attend so I can say it!), particularly the older and smaller Churches, is that I go into such transactions with the expectation that I will be required to perform some curative work on the underlying governance documents. I typically have the Church Clerk certify as to the authority, identity of trustees and the method of notice.

C. Nonprofit Corporations.

I have encountered several Churches, including congregational Churches, that were set up as typical non-profit corporations and their transactions would be governed by the following statute:

§ 10A-3-6.01. Sale, lease, exchange, or mortgage of assets.

**A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a nonprofit corporation** may be made upon the terms and conditions and for the consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as **may be authorized in the**

following manner:

(1) **If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting.** Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the nonprofit corporation shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At the meeting the members may authorize the sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the nonprofit corporation therefor. **The authorization shall require at least two-thirds of the votes entitled to be cast by members present or represented by proxy at the meeting.** After the authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) **If there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a nonprofit corporation shall be authorized upon receiving the vote of a majority of the directors in office.**

D. Unincorporated Associations.

Congregational churches, particularly older ones, may be unincorporated associations that previously could not own property at common law. The legislative provisions are as follows:

§ 10A-17-1.05. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.

(a) **Unless prohibited or otherwise limited by its written rules or governing documents, a nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.**

(b) Unless prohibited or otherwise limited by its written rules or governing documents, a nonprofit association may be a legatee, devisee, or beneficiary of a trust or contract.

(c) Real and personal property in Alabama may be acquired, held, encumbered, and transferred by a nonprofit association, whether the nonprofit association or a member has any other relationship to Alabama.



§ 10A-17-1.06. Statement of authority as to real property.

(a) **A nonprofit association shall execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.**

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the judge of probate of the county in which the real property is located.

(c) A statement of authority **shall set forth:**

(1) The **name of the nonprofit association;**

(2) The address in Alabama, including the **street address**, if any, of the nonprofit association, or, if the nonprofit association does not have an address in Alabama, its address out of state;

(3) **The name or title of a person authorized to transfer** an estate or interest in real property held in the name of the nonprofit association; and

(4) The **action, procedure, or vote of the nonprofit association which authorizes the person to transfer the real property** of the nonprofit association **and which authorizes the person to execute the statement of authority.**

(d) **A statement of authority shall be executed and recorded in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.**

(e) The judge of probate shall collect a fee for recording a statement of authority in accordance with Article 4 of Chapter 1.

(f) An amendment, including a cancellation, of a statement of authority shall meet the requirements for execution and recording, and be accompanied by payment of the same recording fee payable to and for the judge of probate, of an original statement. Unless cancelled earlier, a recorded statement of authority as amended is cancelled by operation of law five years after the date of the most recent amended statement of authority.

(g) **If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the judge of probate of the county in which the real property is located, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.**

§ 10A-17-1.15. Transition concerning real and personal property.

(a) **If, before January 1, 1996, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on January 1, 1996 the estate or interest vests in the nonprofit association unless the parties have treated the transfer as ineffective.**

(b) If, before January 1, 1996, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after January 1, 1996, unless otherwise prohibited by terms of a written trust, the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

A sample Statement of Authority is set out in Section IV.

### III. Legislative Update

HB 200 (Almond/Givhan) is the “annual keeping up with Delaware bill.”

The Business and Nonprofit Entity Code Revision Committee continues to review and update Alabama’s Business and Nonprofit Entity Code (Title 10A) (the “Code”). The Committee continues its work by preparing proposed changes annually, or as needed, so that the Code (i) remains current with the rest of the country, (ii) provides Alabama businesses with the appropriate tools to conduct business in this state quickly and efficiently, and (iii) **encourages Alabama businesses to use Alabama entities rather than being forced to utilize Delaware or another state’s entity laws.**

In Chapter 1 (the Hub), the law has been modified for a number of technical matters, including references to Chapter 18, deleting old references to the Chapter 3, and codifying issues regarding electronic filing issues and name reservation issues. The law has also been clarified in the merger provisions to codify the current practice of providing certain termination fees and other consequences in merger agreements, to codify the current practice of approving merger agreements, and to codify the current practice of naming of merger agreements.

In Chapter 2A (the Alabama Business Corporation Law), Chapter 3A (the Alabama Nonprofit Corporation Law), Chapter 5A (the Alabama Limited Liability Company Law), Chapter 8A (the Alabama Partnership Law), and Chapter 9A (the Alabama Limited Partnership Law) the law has been (i) clarified by codifying the common law doctrine of independent legal significance, a doctrine which is a bedrock of corporate and entity law (this codification follows the law of Delaware, Texas, and a number of other states in this area), (ii) clarified by codifying the current practice of approving and authorizing agreements, including conversion, merger, and exchange agreements, and providing a ratification process for documents that were not properly approved (this clarification follows the clarifications made in Delaware’s General Corporation Law), (iii) (excluding Chapter 3A) clarified by codifying the current practice of providing termination fees and other consequences in merger agreements (this clarification follows the clarifications made in

Delaware's General Corporation Law), and (iv) clarified by codifying the current practice of naming of merger agreements.

In Chapter 4 (the Alabama Professional Corporation Law), the law has been modified to provide a simplified purchase process upon the death or disqualification of a stockholder or member of an Alabama Professional Corporation.

In Chapter 5A (the Alabama Limited Liability Company Law), the law has been further modified (i) modified by providing that a limited liability company agreement may allow for the transfer of a transferable interest upon the death of a transferable interest holder, with or without consideration, subject to outstanding charging orders and subject to the rights of creditors (this modification clarifies current Alabama law with respect to transfers of transferable interests for consideration, follows the law of Alabama with respect to accounts regarding transfers of transferable interests without consideration, and follows the limited liability company law of Maryland and other states in this area), and (ii) modified to provide a simplified purchase process upon the death or disqualification of a member of an Alabama limited liability company governed by the professional provisions of this Chapter.

Chapter 5A was also amended as follows: (g) Notwithstanding anything in Title 43 to the contrary, a limited liability company agreement may provide that a transferable interest may or shall be transferred in whole or in part, with or without consideration, to one or more persons at the death of the holder of the transferable interest. Any transferable interest transferred pursuant to this subsection shall be subject to any outstanding charging order under Section 10A-5A-5.03. This subsection does not limit the rights of creditors of holders of transferable interests against transferees under this chapter or other laws of this state."

The bill also broke out Chapter 18 as the Alabama Trade Association Law.

This bill further shifted the provisions for the requirements for a statement of partnership including the words "general partnership", G.P., or GP and non-for-profit partnerships including "not for profit general partnership" or N.G.P. or NGP.

One interesting nugget in this bill involves the changes to § 10A-1-5.33 allowing a registered agent to give notice of a change of its name or a change of this street address, or both, by filing a single applying to more than one entity, so long as the unique identifying number

assigned by the Secretary of State for each entity and only one fee is payable per 10A-1-4.31(h), being \$100.

HB 164 (Faulkner/Smitherman) was another ALI bill and it passed both houses but was not delivered to the Governor in time to overcome a pocket veto, so assuming she signs the bill it will be known as the “Revised Small Estates Act”.

The bill modifies § 43-2-690, et. seq. Under existing law, the Alabama Small Estates Act allows the surviving spouse or other distributee of a decedent, who owns no real property at the time of death, to receive in a summary manner the decedent’s personal property, provided the value of this personalty is not in excess of \$25,000, or such adjustments to that amount as made on an annual basis by the State Finance Director based on changes in the Consumer Price Index.

This bill raises the threshold amount distributable under the Small Estates Act to the combined maximum amount, as adjusted from time to time based on the Consumer Price Index, as allowed under the homestead allowance, exempt property, and family allowance, which is currently adjusted to \$47,000.

This bill streamlines the procedure for both claiming exemptions and allowances in a small estate and for settling the small estate. This bill further clarifies who is a surviving spouse under an intestate estate when there is a divorce, annulment, or separation and also expressly permits summary distributions of small estates under the Probate code.

The bill was amended to exclude estates where a minor child was involved who was not the child of the surviving spouse. **The law does not allow this procedure to be used when real property is involved!**

HB 225 (Hollis) addressed licensing and testing for real estate agents and brokers.

HB 230 (Shed) addresses disclosures and co-brokerage arrangements to comply with the HAAR settlement.

SB 57 (Givhan/Robbins) was signed by Governor Ivey Tuesday. The bill amends §35-4-25 and allows employees of limited liability companies the same ability to notarize their employer’s signatures on the same basis as banks, credit unions and corporations. The limitations are that the notary cannot own more than one percent (1%) of the “stock” or be an officer.

#### IV. Sample Forms

Unanimous Resolution of LLC to Convey Property

Certificate of Incumbency for Limited Liability Company

Clerk’s Certificate of Church Authority to Convey Property

Statement of Authority for Unincorporated Association

A. Unanimous Resolution to Sell

STATE OF ALABAMA     )  
  )  
COUNTY OF MADISON    )

RESOLUTION OF THE MEMBERS AND MANAGERS  
OF ROCKET BLAST, LLC

THIS RESOLUTION is authorized by all of the Members and the Managers of Rocket Blast, LLC (the “Company”).

W I T N E S S E T H:

WHEREAS, the undersigned constitute all of the Members and Managers of Company;

WHEREAS, John Glenn, as Manager of the Company, entered into a sale of a portion of the real property of the Company pursuant to that certain Agreement for the Purchase and Sale of Real Property dated December 7, 2024, between the Company and Buildmore Missiles, LLC, as amended by that First Amendment to the Agreement for the Purchase and Sale of Real Property dated January 10, 2025 (as amended, the “Sale Agreement”, with the real estate described therein being referenced as the “Property”); and

WHEREAS, it is in the best interests of the Company to sell the Property to the Purchaser for the purchase price established in the Sale Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Members and Managers of the Company hereby authorize and empower John Glenn and Neil Armstrong, as Managers of the Company, acting alone or jointly, (collectively referred to herein as the “Manager”) to take all such steps as may be necessary or required and to execute all documents in connection with the Company’s business, including, but not limited to, carrying out the terms of the Sale Agreement to sell the Property.

In executing said documents for the purpose of facilitating the operations, business, sale and consummation of the sale of the assets of the Company, as described above, the Manager is expressly empowered and authorized to: do all of the acts, execute and assign or endorse and deliver all of the instruments, deeds, bills of sale, agreements, licenses, contracts, leases, records, closing statements, promissory notes, assignments, affidavits, escrow agreements, tax proration agreements or other agreements or documents which shall be required to consummate the sale of the Property pursuant to the Sale Agreement however described. All acts done by, and all documents, instruments, or agreements executed by a Manager (or both of them) shall legally bind the Company; and

BE IT FURTHER RESOLVED, that the documents generally described above may contain such provisions, terms, conditions, covenants, warranties, and representations as the Manager, in his/her/their sole discretion, deem advisable, necessary, or customary; and

RESOLVED FURTHER, that the Purchaser shall be entitled to rely on these resolutions until receipt by the Purchaser of written notice of the cancellation or modification hereof signed by the Manager of the Company; and

BE IT FURTHER RESOLVED, that each Manager is hereby authorized, directed, and empowered to do and perform all acts and things he deems advisable, necessary, expedient, convenient or proper in order to fully consummate all of the transactions contemplated in this Resolution, and furthermore all prior acts of either Manager in furtherance of the matters authorized by these resolutions are hereby ratified and approved; and

BE IT FURTHER RESOLVED, that any number of counterparts of this Resolution may be executed and that each such counterpart shall be deemed to be an original instrument, but that all such counterparts together shall constitute but one instrument; and, provided further, any such counterpart may be executed by facsimile signature.

IN WITNESS WHEREOF, we, the undersigned, constituting all of the Members and Managers of the Company, have signed our names effective as of the 15th day of May, 2025.

---

John Glenn, Member & Manager

---

Neil Armstrong, Manager

---

Jan Davis, Member

B. Certificate of Incumbency for Limited Liability Company

**SPACE COMMAND PROPERTIES, LLC**

**CERTIFICATE OF INCUMBENCY**

The undersigned Members of Space Command Properties, LLC, a limited liability company organized in Madison County, Alabama, do hereby certify as follows:

1. That we are the only Members of Space Command Properties, LLC, a Mississippi limited liability company and that as the only Members of Space Command Properties, LLC, we jointly have custody and control of the records of SPACE COMMAND PROPERTIES, LLC.
2. That Walter Blanc is the duly elected and qualified Manager of SPACE COMMAND PROPERTIES, LLC by virtue of the Operating Agreement, a true and correct copy of which is attached to this Certificate, and which has not been amended, modified, or repealed in any respect, whether in writing, orally, or by implication.
3. That attached hereto and signed by us for identification is a true and correct copy of the resolutions adopted by unanimous consent of the Member(s) of the Company at a meeting held on \_\_\_\_\_ with respect to that certain loan in the aggregate maximum amount of \$\_\_\_\_,000.00 from BIRMINGHAM BIG BANK to finance the construction of a \_\_\_\_\_ located at \_\_\_\_\_ Huntsville, AL 35801 which resolutions are in full force and effect and have not been amended, modified or repealed in any respect.
4. That set forth below are the names and signatures of the duly elected, qualified and acting Managers of the Company, holding, as of the date of this Certificate of Incumbency, the offices set forth opposite their listed names:

NAME	OFFICE	SIGNATURE
Walter Blanc	MANAGER	

5. That attached hereto is a true and correct copy of the Articles of Organization of the Company as filed with the Secretary of State of Alabama. The Certificate of Organization is currently in full force and effect.
6. That attached hereto is a true and correct copy of the Certificate of Existence of the Company.

In witness whereof, we have hereunto set our hands this \_\_\_\_\_ day of May 2025.

**[Signatures on next page]**

C. Clerk's Certificate

**CERTIFICATE OF CLERK**

I, the undersigned, \_\_\_\_\_, of \_\_\_\_\_, Alabama, hereby certify that: the attached resolution was duly adopted at a regular business meeting of the \_\_\_\_\_ Church of Madison, Alabama (the "Church"), in the Church sanctuary, the place of regular meetings of the Church, with due notice provided to the membership, and I further certify that said meeting was in compliance with the governing documents of the Church, and that John Hancock, Samuel Adams and Thomas Jefferson are the duly elected Trustees for the Church.

\_\_\_\_\_  
\_\_\_\_\_, Clerk

STATE OF ALABAMA     )  
  )  
COUNTY OF MADISON    )

I, the undersigned, Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as Clerk is signed to the foregoing Certificate of Clerk (the "Certificate"), and who is known to me, acknowledged before me on this day:

1.     That she has read and is informed of the contents of the foregoing Certificate;
2.     That the facts set forth in the foregoing Certificate are correct and true according to the best of her personal knowledge; and
3.     That she executed the same voluntarily on the day the same bears date.

GIVEN UNDER MY HAND and official seal on this the \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



D. Statement of Authority for Unincorporated Association

STATE OF ALABAMA

\_\_\_\_\_ COUNTY

**VERIFIED STATEMENT OF AUTHORITY**

The \_\_\_\_\_ Church, a non-profit association under the law of the State of Alabama, files this statement in writing, verified by oath of \_\_\_\_\_, who has personal knowledge of the facts set forth herein, and states as follows:

1. That the undersigned is \_\_\_\_\_ of the \_\_\_\_\_ Church, an Alabama unincorporated non-profit association (the "Association").
2. That the Association's street address is \_\_\_\_\_.
3. \_\_\_\_\_ is the Association's duly authorized representative to transfer the property described in attached Exhibit A to \_\_\_\_\_, by warranty deed.
4. The Association authorized \_\_\_\_\_ to convey said property by taking the following action(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, the undersigned, Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ is signed to the foregoing Verified Statement of Authority (the "Statement"), and who is known to me, acknowledged before me on this day:

1. That s/he has read and is informed of the contents of the foregoing Statement;
2. That the facts set forth in the foregoing Statement are correct and true according to the best of his/her personal knowledge; and

3. That s/he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

This Instrument Prepared By:

Samuel H. Givhan

Lanier, Ford, Shaver & Payne, P.C.

2101 West Clinton Ave

Suite 102

Huntsville, Alabama 35805