

Conversion of Entities in Colorado

by Beat U. Steiner

This article discusses the conversion of domestic and foreign entities of one form to another form. It covers the mechanics of conversion, the legal effects of conversion, and tax and business issues that should be considered when converting an entity into a different form.

This article discusses some of the practical considerations in converting entities in Colorado. The great advantage of conversion is the ability to accomplish directly and simply what previously could be done only indirectly, either by forming a new entity and transferring assets to it or by forming a new entity and merging the existing entity into it. Changes made in Colorado's entity laws over the last decade provide enormous flexibility, allowing virtually any entity to be converted into an entity of another form.¹

Recent legislation² has consolidated the provisions for the conversion of entities so that all conversions pursuant to Colorado law will take place under CRS §§ 7-90-101 *et seq.* ("Article 90"),³ rather than the individual so-called "organic statutes" (*see boxed acronym key*). Such a generic approach is appropriate, but it has some pitfalls that will be explained in this article. Although the conversion provisions apply to cooperatives and limited partnership associations, the discussion of these entities is limited because relatively few of these entities have been formed in Colorado.⁴

This article first covers conversion mechanics and the legal effects of conversion. The article then discusses tax and business considerations arising in conversions. As will become evident, the conversion of an entity can easily be accomplished, but constitutes a significant business transaction, often having tax consequences and raising many business issues that should be thought through in advance.

CONVERSION MECHANICS

Article 90 provides for the conversion of domestic entities into domestic entities of any other form and foreign entities of any

form. It also provides for any foreign entity to be converted into any form of domestic entity. In most conversions, a statement of conversion and constituent filed documents must be delivered to the Colorado Secretary of State for filing. Additional requirements are imposed if a foreign entity is one of the constituent entities in the conversion.

Types of Conversions

Any domestic entity of one form may be converted into a domestic entity of any other form under Article 90. "Domestic entity" is defined as including the following entity forms: domestic corporation, domestic general partnership, domestic cooperative, domestic limited liability company, domestic limited partnership, domestic limited partnership association, domestic nonprofit association, domestic nonprofit corporation, or "any other organization or association" formed under a Colorado statute or common law or "as to which the law of this state governs relations among the owners and between the owners and the organization or association and that is recognized under the law of this state as a separate legal entity."⁵ The "any other organization or association" catch-all includes such entities as ditch and reservoir companies and other special purpose corporations,⁶ as well as religious and benevolent organizations.⁷ Trusts, estates, and sole proprietorships are not "domestic entities" and, thus, cannot be converted under these provisions.⁸ A joint venture, if there is such a thing that is not a GP,⁹ can be converted only if it is a GP.

Domestic entities of any form also may be converted into "any form of foreign entity recognized in the jurisdiction under the law of which the entity will be consid-

ered to have been formed after the conversion."¹⁰ Thus, for example, if the foreign jurisdiction recognizes LLCs, any Colorado entity may be converted into an LLC of that jurisdiction. CRS § 7-90-201(2), as amended by House Bill ("H.B.") 04-1398, does not require that the foreign jurisdiction have a law recognizing the conversion.

On its face, CRS § 7-90-201(2) provides that a business could successfully convert into a foreign entity by filing the neces-



Organic Statutes and Acronyms Referred to in this Article

1931 LP Law	Uniform Limited Partnership Law of 1931, CRS §§ 7-61-101 <i>et seq.</i>
Article 90	Colorado Corporations and Associations Act, CRS §§ 7-90-101 <i>et seq.</i>
CBCA	Colorado Business Corporation Act, CRS §§ 7-101-101 <i>et seq.</i>
Cooperative Act	Colorado Cooperative Act, CRS §§ 7-56-101 <i>et seq.</i>
CUPA	Colorado Uniform Partnership Act, CRS §§ 7-64-101 <i>et seq.</i>
LLC Act	Colorado Limited Liability Company Act, CRS §§ 7-80-101 <i>et seq.</i>
LP Act	Colorado Limited Partnership Act of 1981, CRS §§ 7-64-101 <i>et seq.</i>
LPA Act	Colorado Limited Partnership Association Act, CRS §§ 7-63-101 <i>et seq.</i>
Nonprofit Associations Act	Uniform Unincorporated Nonprofit Associations Act, CRS §§ 7-30-101 <i>et seq.</i>
Nonprofit Corporation Act	Colorado Revised Nonprofit Corporation Act, CRS §§ 7-121-101 <i>et seq.</i>
UPL	Uniform Partnership Law, CRS §§ 7-60-101 <i>et seq.</i>

Domestic Entities Referred to in this Article

1931 LPs	Limited partnerships governed by the 1931 LP Law and either the UPL or CUPA, except when otherwise specified
Cooperatives	Cooperatives governed by the Cooperative Act
Corporations	Corporations governed by the CBCA
GPs	General partnerships, whether governed by the UPL or CUPA
LLCs	Limited liability companies governed by the LLC Act
LLLPs	Limited liability limited partnerships, whether governed by the 1931 LP Law or the LP Act and whether by the UPL or CUPA, except when otherwise specified
LLPs	Limited liability partnerships, whether governed by the UPL or CUPA, except when otherwise specified
LPs	Limited partnerships governed by the LP Act and either the UPL or CUPA, except when otherwise specified
LPAs	Limited partnership associations governed by the LPA Act
Nonprofit Associations	Unincorporated nonprofit associations governed by the Nonprofit Association Act
Nonprofit Corporations	Nonprofit corporations governed by the Nonprofit Corporation Act
S Corporations	Corporations governed by the CBCA that have met the requirements for being taxed according to Subchapter S of the IRC

Article 90 Definitions Referred to in this Article

- Constituent Document:** A constituent-filed document or a constituent-operating document (CRS § 7-90-102(4))
- Constituent Entity:** With respect to a conversion, the converting entity and the resulting entity (CRS § 7-90-102(5))
- Constituent-Filed Document:** The articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other document of similar import filed or recorded by or for an entity in the jurisdiction under the law of which the entity is formed, by which it is formed, or by which the entity obtains its status as an entity or the entity or any or all of its owners obtain the attribute of limited liability. Where a constituent filed document has been amended or restated, “constituent-filed document” means the constituent-filed document as last amended or restated (CRS § 7-90-102(6))
- Constituent-Operating Document:** Articles of incorporation, operating agreement, or partnership agreement, and bylaws of a corporation, a nonprofit corporation, cooperative, or limited partnership association (CRS § 7-90-102(7))
- Converting Entity:** The entity that converts into another form of entity pursuant to CRS § 7-90-201 (CRS § 7-90-102(8))
- Organic Statutes:** With respect to any entity: (1) this article [*i.e.*, Article 90]; (2) the statute, whether of this state or of another jurisdiction, under which the entity is formed; and (3) all other statutes of this state or such other jurisdiction that govern the organization and internal affairs of the entity (CRS § 7-90-102(42))
- Owner:** A shareholder of a corporation, a member, a partner, or a person having an interest in any other entity that is functionally equivalent to an owner’s interest (CRS § 7-90-102(43))
- Primary Constituent Documents:** Articles of incorporation with respect to a corporation and constituent documents with respect to other entities (CRS § 7-90-102(50))
- Resulting Entity:** The entity that results from the conversion of an entity pursuant to CRS § 7-90-201 (CRS § 7-90-102(59))

sary constituent documents for the formation¹¹ of the entity in the foreign jurisdiction and meeting the other Colorado requirements for conversion. However, practitioners should ask to what extent the resulting entity will be recognized under the law of the foreign jurisdiction. Will the entity be recognized for all purposes as being the “same entity,”¹² as before the conversion, or just a new entity in the foreign jurisdiction? Will the assets of the converting entity be vested in the foreign resulting entity as the Colorado conversion statute provides? Based solely on the Colorado statute, it would seem difficult to give a legal opinion as to the effect of the conversion on the continuation and the assets and liabilities of the converting Colorado entity under the law of the foreign jurisdiction.

In addition, foreign entities of any form may be converted into domestic entities of the same or any other form.¹³ This type of conversion is permitted “if the conversion is not prohibited by the constituent documents or organic statutes and if the foreign entity complies with all of the requirements, if any, of its constituent documents or organic statutes in effecting the conversion.”¹⁴ Once again, the foreign jurisdiction need not have laws providing for conversion, as long as the conversion is not prohibited by the laws of the foreign jurisdiction. Similarly, the constituent documents of the constituent entities do not need to provide for the conversion; they simply cannot prohibit the conversion.

To the extent the constituent documents or the organic statutes have requirements for conversion, these requirements must be met. Once again, however, if the foreign jurisdiction has no conversion statute, and the conversion is effected either pursuant to, or in a manner not prohibited by, the constituent documents of the foreign entity and Article 90 alone, there may be questions concerning the status of the foreign entity and its assets and liabilities under the law of the foreign jurisdiction after the conversion. As an example, the conversion may be effected under Article 90 and be fully effective in Colorado, but, under the law of the foreign jurisdiction, the entity may still exist in its original form in the foreign jurisdiction. The following questions may arise:

- Will it still be required to pay franchise taxes or file reports in the foreign jurisdiction?
- Is title to its assets vested in the foreign converting entity or in the Colorado resulting entity?

- Are its owners personally liable according to the law of the foreign jurisdiction or according to Colorado law?

Perhaps the practitioner concludes that the lack of good standing or even administrative dissolution of the entity in the foreign jurisdiction is of no consequence to the resulting entity because the entity no longer does business there. Perhaps the practitioner is not concerned about title to the assets because they are all located in Colorado. However, it is still necessary to determine that no personal liability or lien attaches as a result of the failure to pay franchise taxes, file reports, or meet other requirements imposed on the converting entity in the foreign jurisdiction. Moreover, the practitioner might be uncomfortable about that liability, or in giving a legal opinion about that entity or its assets, if there is no law in the foreign jurisdiction addressing the status of the converting entity. Accordingly, a conversion involving a foreign entity governed by laws that do not include a statutory provision for its conversion should be undertaken with full awareness that legal problems may result in the foreign jurisdiction.

It is worth noting that there are laws other than Article 90 that can effect a change in the form of an entity. CRS § 7-90-205 states that the conversion provisions of Article 90 are not exclusive. For example, a nonprofit corporation can become a ditch company governed by Article 42 by complying with the provisions of that article.¹⁵ Registrations under CRS §§ 7-60-144 and 7-64-1001 “convert” GPs into LLPs and 1931 LPs and LPs into LLLPs, and withdrawals of registration under the same sections reverse these conversions; an election under CRS § 7-62-1103 by a 1931 LP to be governed by the LP Act “converts” the 1931 LP into a LP; and an amendment to a GPs’ partnership agreement changing the governing law can “convert” the GP from, say, a Colorado GP to a Delaware GP.

Moreover, the conversion of a Colorado entity into a foreign entity can be effected under the laws of foreign jurisdictions that have conversion statutes of their own. Certain jurisdictions, such as Delaware, have statutory provisions for more exotic entity changes, such as domestication of non-U.S. entities¹⁶ and transfers (with or without continuance in Delaware) to other jurisdictions (other than a state).¹⁷ Although Article 90 covers all conversions in which a domestic entity is either the converting or the resulting entity, Article 90 may not be the easiest way

to accomplish a change in the form of an entity, and the methods provided in these other laws should be kept in mind.

At the same time, some conversions that are allowed under Article 90 are prohibited under the applicable organic statutes or other laws. A single-member LLC, for example, cannot be converted into any form of partnership because partnerships, by definition, require more than one partner. Similarly, a corporation, nonprofit corporation, or LLC serving as a unit owners’ association under the Colorado Common Interest Ownership Act cannot lawfully be converted into any form of partnership because partnerships cannot serve as associations under that Act.¹⁸

Approval of Conversions—Generally

A conversion must comply with

any organic statute or the common law [that] expressly prohibits or restricts the right of any entity to convert into . . . any other form of entity, grants dissenter’s rights with respect to such . . . conversion, or imposes requirements on such conversion. . . .¹⁹

There are no provisions of any Colorado organic statutes (other than the provisions of Article 90 itself) or of common law that prohibit or restrict conversion or grant dissenter’s rights or impose other requirements on conversions and that are generally applicable to Colorado entities or any one of the forms of domestic entities. Any restrictions that presently exist under Colorado law outside of Article 90 apply to entities in particular lines of business,²⁰ such as insurance companies, banks, and certain professions.

The first step in effecting a conversion under Article 90 is to obtain internal approval of the terms and conditions of the conversion. CRS § 7-90-201(4) specifies the nature of the approval that is required for a conversion. The approval required is based on a hierarchy as follows:

Level 1: what the primary constituent documents and organic statutes expressly provide for approval of the conversion;²¹

Level 2: in the absence of express provisions under CRS § 7-90-201(1), what the primary constituent documents and the organic statutes provide for approval of an amendment to the primary constituent documents; and

Level 3: in the absence of provisions under CRS § 7-90-201(1) or (2), the unanimous consent of the owners (shareholders, partners, members, or the like).²²

An example might be helpful here. Consider the approval required for a general partnership governed by CUPA to convert to a Colorado LLC. The organic statutes governing the GP are CUPA and Article 90. CUPA does not expressly address the approval for conversion of a GP, so counsel may ignore the organic statutes portion of level (1), listed above. Next, counsel looks to the primary constituent document of the GP (that is, the partnership agreement).²³ If the partnership agreement addresses the approval required for conversion, the provisions of the partnership agreement that do so will govern. If the partnership agreement is silent on conversion, counsel then turns again to CUPA and the partnership agreement, this time to determine what they provide for approval of an *amendment* to the primary constituent documents. The approval provisions for such an amendment will apply to the conversion.²⁴

CUPA, it turns out, does not directly address amendment to a partnership agreement; it defers to the partnership agreement.²⁵ If the approval required for amending the partnership agreement is addressed in the partnership agreement, that same kind of approval will be required to approve a conversion. If the partnership agreement has no such approval provision, the unanimous consent of the partners is required. In that case, unanimous consent is required either under hierarchy level (2) (because unanimous consent is the CUPA default rule for amendment to the partnership agreement) or under hierarchy level (3), which mandates unanimous consent if both the organic statutes and the primary constituent documents are silent as to the approval required for amendment of the primary constituent documents.

CRS § 7-90-201(4) does not resolve the problem created, for example: (1) if unanimous consent is required for amendment of the articles of organization of an LLC or certificate of limited partnership of an LP and only a two-thirds approval is required for amendment to the operating agreement or limited partnership agreement; or (2) if different approvals are required for amending different provisions of the operating agreement or limited partnership agreement. In this author's opinion, choosing the most stringent provision

(that is, the highest voting requirement) is the only safe bet.²⁶

If there is a conflict between what the organic statute provides and what the primary constituent documents provide, the provisions that prevail for other purposes presumably prevail for the purposes of CRS § 7-90-201(4). With respect to an LLC, for example, the LLC Act requires unanimous consent for an amendment to its primary constituent documents, but the operating agreement can require a lesser approval. Under CRS § 7-80-108, the operating agreement prevails over a contrary provision of the LLC Act (with some exceptions). Therefore, any lesser approval provisions of the operating agreement prevail. Moreover, those lesser approval provisions will govern the approval for amendment to the primary constituent documents of the LLC and also, when level (2) of the hierarchy applies, the approval for a conversion of the LLC.

With respect to a corporation, the result is somewhat different. Under CRS § 7-110-103(5), the articles of incorporation of a corporation can prescribe a greater, but not a lesser, vote for approval of an amendment to the articles of incorporation. Thus, if a provision of the articles of incorporation states that the board of directors, without approval of the shareholders, can amend any provision of the articles (certain amendments, but not all amendments, may be approved solely by the board under CRS § 7-110-102), the provision would be ineffective. Hence, that approval provision of the articles will not be effective for determining the approval required for conversion of the corporation. On the other hand, if a greater vote is required by the articles for an amendment to the articles, that greater vote also is required for conversion.

An interesting problem arises if the greater vote requirement for amendment to the articles is contained in bylaws adopted by the shareholders. Under CRS § 7-110-103, bylaws adopted by the shareholders may require a greater vote than is provided in the organic statute. It is tempting to believe that since the greater vote requirement is contained in the bylaws, and the bylaws are not a primary constituent document of a corporation, the bylaws requirement can be ignored for purposes of CRS § 7-90-201(4). More likely, however, the author believes a court would conclude that the organic statute dictates the higher approval requirement contained in the bylaws and that higher approval is required for conversion.

Furthermore, when analyzing the requisite approval for conversion, counsel should be aware that some entities will require two levels of approval.²⁷ In Colorado corporations, for example, amendments to the articles of incorporation (unless otherwise provided in the articles and except in certain other circumstances)²⁸ require a recommendation by the board of directors or 10 percent or more of the shareholders and approval by the shareholders.²⁹ If level (2) in the hierarchy listed above governs the conversion of the corporation, the conversion will require the recommendation of the board of directors or 10 percent or more of the shareholders and approval by the shareholders. Similarly, if class voting applies to approving amendments to the articles of incorporation, class voting will be required to approve a conversion.³⁰ Indeed, all provisions relating to "any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties" must be complied with.³¹

As to corporations, the approval hierarchy contains a serious anomaly. At hierarchy level (2), the approval required for conversion is based on the approval required for amendment to the articles of incorporation for the corporation. Because CRS § 7-90-201(4) is keyed to the "primary constituent documents," it is clear that the approval is based on what is contained in the articles of incorporation, not the bylaws, of a corporation. Although for most entities, that approval will be the highest level of approval required for any action of the entity, that is not the case for corporations.

Under CRS §§ 7-110-103(5) and 7-107-206(3), the vote to amend articles of incorporation is typically just a plurality of affirmative votes over opposing votes at a meeting at which a quorum (which can be as little as one-third of the outstanding votes) is present.³² However, other major corporate action, such as mergers and share exchanges³³ and sales of assets,³⁴ requires the affirmative vote of a majority of the outstanding shares. It thus appears that it can take a smaller affirmative vote to approve a conversion of a corporation into some other form of entity than to merge the corporation into another entity.

Approval Based on Change in Liability

In addition to the general owner approval, any owner whose liability "solely

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by reason of being an owner” is adversely changed by the conversion has a separate right to approve or disapprove the conversion under CRS § 7-90-201(4)(b). This class of owners includes those whose liability for the obligations of the entity before the conversion is limited but who will be liable for obligations of the entity after conversion or “will be so liable to a greater extent.” The following will certainly fall within this mandatory consent class: the limited partners of an LP, partners of an LLP or LLLP, members of an LLC or LPA, shareholders of a corporation, and members of a nonprofit corporation, who, after the conversion, will be general partners of a GP or LP, or members of a nonprofit association. These are owners whose liability is clearly limited before the conversion and clearly unlimited (or less limited) after the conversion.

Owners not intended to be included in this mandatory consent class include: the limited partners of an LP, partners of an LLP or LLLP, members of an LLC or LPA, shareholders of a corporation, and members of a nonprofit corporation who, after the conversion, are the limited partners of an LP, partners of an LLP or LLLP, members of an LLC or LPA, shareholders of a corporation, or members of a nonprofit corporation. These are owners whose liability is clearly limited before and *after* the conversion. The changes in liability for various types of conversion are summarized in the chart accompanying this article, entitled “Appendix I, Domestic Entity Conversions—Ownership and Management Issues.”

The words “will be liable to a greater extent,” however, may prove to be troublesome in stating general rules regarding this mandatory consent class. An argument could be made, for example, that a limited partner in an LP has liability to a greater extent than a shareholder in a corporation by virtue of CRS § 7-62-608, relating to the wrongful return of contributions. Alternatively, counsel might try to show that limited partners in an LP have greater liability for obligations of the LP than do shareholders of a corporation by virtue of CRS § 7-62-303, relating to the liability of limited partners if they become involved in management of the LP. The drafters of the legislation did not intend this to be a subtle test. It was assumed that the liability of owners is the same in any limited liability entity (other than general partners in an LP), at least for purposes of this provision.³⁵

Members of a nonprofit corporation being converted into a nonprofit association have a more substantial argument for being part of this mandatory consent class. This is because the liability protection of a member in a nonprofit association is certainly more limited than that afforded the members of a nonprofit corporation.³⁶

CRS § 7-90-201(4)(b) does not make clear whether the consent of the owners whose liability will change can consent in advance to a particular conversion or conversion in general. A limited partnership agreement could provide that the general partners may convert the LP at any time to any other entity without the consent of the limited partners, as long as the economic interests of the limited partners were not changed thereby. Would this provision be adequate to override the requirement for consent contained in CRS § 7-90-201(4)(b)? Counsel could make a strong argument that the general partners’ contractual right should be enforced, but good arguments to the contrary also could be made. In many cases, the easiest way to obtain approval may be to amend the existing primary constituent documents to expressly permit the conversion. Amending the primary constituent documents also may be the easiest way to eliminate doubts about the approval required for conversion.³⁷

Article 90 is a “generic” conversion provision; accordingly, it may be that its approval provisions do not furnish a totally clear result for every entity seeking to convert. The most prudent path is for practitioners to choose the most stringent approval requirement and, in the absence of clarity, to obtain the unanimous consent of the owners.

What Must be Approved

Pursuant to CRS § 7-90-201(4)(a), as amended by H.B. 04-1398, the approval is to encompass not only the conversion itself, but specifically must include the “terms and conditions of the conversion . . . , including the manner and basis of changing the owners’ interests of each converting entity into owners’ interests or obligations of the resulting entity or into money or other property in whole or in part.”³⁸ Thus, it would appear that a resolution or consent merely stating, “We hereby approve the conversion of the LLC into a Colorado corporation” is insufficient. The approval also should state: (1) how many shares in the corporation will be authorized and issued; (2) of what class or class-

es³⁹ each membership interest will be converted into shares of the corporation; and (3) the number of shares that will be issued to each member of the LLC and of what class or classes.

Now that only “bare bones” constituent-filed documents are required for the formation of most entities, the practitioner documenting the approval for a conversion will have to give careful thought to the “terms and conditions of the conversion” that need to be approved. How much more detail is required in an approval? In particular, how much more detail is required when changing the form of the entity, in and of itself, will make changes to the “deal”? CRS § 7-90-201 does not say. Thus, it will be possible to litigate the effectiveness of a conversion on the basis that not all of the terms and conditions were approved whenever the approval is not comprehensive. Some of the terms and conditions of a conversion that should be addressed in the approval are summarized in Appendix I.

However, these are certainly not all the issues that should be considered. The issues listed in the chart fall into five categories: purposes, ownership, change in liability, management, and constituent documents.

The first category—purposes—is fundamental. Often, the entity’s purposes will remain the same, but certain conversions, such as those involving nonprofit corporations and nonprofit associations, may require that the purposes of the entity be changed, either to a nonprofit purpose or to a for-profit purpose.

Second, ownership must be addressed. Shares of corporations, memberships of nonprofit corporations, nonprofit associations, LLCs and LPAs, and partnership interests must be changed into their counterparts in the resulting entity unless those interests are disposed of with cash or “other property.”⁴⁰

The third category, change in liability, may occur both in how the organic statutes for the resulting entity treat the owners and managers (as discussed above) or as the result of provisions in the constituent documents of the resulting entity. Changes in liability also could occur by the terms of agreements with third parties or even laws or regulations.⁴¹

The fourth category is management. The way an entity is managed generally changes when an entity is converted from one form into another. How these changes are made usually is reflected in the con-

stituent documents for the resulting entity but, in any event, should be part of the approval for the conversion.

The fifth category is the constituent documents. Effecting a conversion will require the constituent filed documents of the resulting entity, if it has any, to be filed in the records of the Secretary of State.⁴² In most cases, it also will be necessary to prepare an appropriate constituent operating document for the resulting entity or to amend the constituent operating document of the converting entity for the proper operation of the resulting entity. If the constituent operating document for the converting entity is used for the resulting entity, it should be amended to consider the changes that are taking place in the purposes, ownership, management, and liability of its owners. As a practical matter, rarely will the mere filing of the documents required to be filed in the records of the Secretary of State in order to effect the conversion be adequate to make the conversion work properly. Any new constituent documents, or the changes to existing constituent documents, should be specifically approved.⁴³

Statements of Conversion And Other Filings

In most cases, following approval of the terms and conditions of the conversion, a statement of conversion must be delivered to the Colorado Secretary of State for filing.⁴⁴ The contents of a statement of conversion are simple and include:

- 1) the entity name of the converting entity, principal office address of its principal office, jurisdiction under the law of which it is formed, and its form of entity;
- 2) the entity name of the resulting entity, principal office address of its principal office, jurisdiction under the law of which it is formed, and its form of entity; and
- 3) a statement that the converting entity has been converted into the resulting entity.⁴⁵

Note that the statement of conversion must contain all of the above-stated information, but may not contain more than the above-stated information.⁴⁶ Thus, even if it is desirable to do so, including the terms and conditions of the conversion in the statement of conversion is not per-

mitted. It may be possible, however, to include the terms and conditions of the conversion in the constituent filed document, if one is required to be filed for the resulting entity and it is of a type that, under the organic statute, permits more than the required information to be included in the document.

No statement of conversion needs to be filed if neither of the constituent entities to the conversion has or will have a constituent filed document filed in the records of the Secretary of State.⁴⁷ Thus, if the constituent entities are only GPs or non-profit associations, no statement of conversion is required.⁴⁸ Even if it is desirable to file a statement of conversion in cases where filing one is not required, it is not permitted for a statement of conversion to be filed in these cases.⁴⁹ The filing requirements for the different types of domestic entity conversions are summarized in the chart, entitled, "Appendix II, Domestic Entity Conversions—Filing Requirements" found at the end of this article.

Practitioners should remember that, under CRS § 7-90-301.5, causing a statement of conversion to be delivered to the Secretary of State for filing constitutes

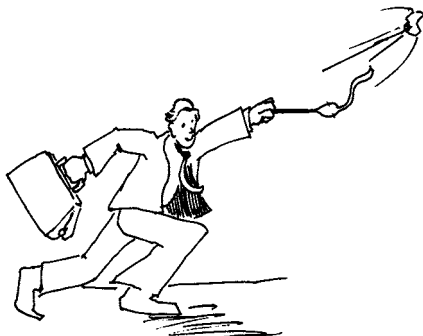
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Thus, the filing of a statement of conversion requires a legal determination that the approval requirements for conversion, along with all other legal requirements for the conversion, have been fulfilled.

Additional Mechanics

If the resulting entity will be an entity for which a constituent filed document is filed in the records of the Secretary of State for its formation, the converting entity must deliver that constituent filed document for filing, along with the statement of conversion.⁵⁰ If the resulting entity is a foreign entity, it must appoint a registered agent for service of process in Colorado pursuant to CRS §§ 7-90-701 *et seq.*,⁵¹ added by H.B. 04-1398, regardless of whether it would be required to do so otherwise. Also, if it transacts business or conducts activities in Colorado (unless the

resulting entity is a foreign GP that is not an LLP or a foreign nonprofit association), it must have a statement of foreign authority filed in the records of the Secretary of State and must otherwise comply with the provisions of CRS §§ 7-90-801 *et seq.*⁵²

CRS §§ 7-90-801 *et seq.* is the part of Article 90 added by H.B. 04-1398 to address the qualification of foreign entities to transact business or conduct activities in Colorado. If the resulting entity is a foreign entity it also "shall promptly pay to the dissenting owners of each domestic entity party to the conversion . . . the amount, if any, to which they are entitled under the organic statutes. . . ."⁵³

In conversions involving nonprofit corporations, and especially if a nonprofit corporation is being converted into a for-profit entity, it may be wise to determine whether any requirements will be imposed by the Colorado Attorney General in light of CRS § 7-90-201(7). This statute expressly preserves the common-law powers of the Colorado Attorney General concerning the conversion of a nonprofit corporation.

Effective Date of a Conversion

Under CRS § 7-90-201(b), a conversion becomes effective as specified by the organic statutes.⁵⁴ In Colorado, the only organic statute that addresses the effectiveness of conversions in general is CRS § 7-90-201(b) itself. Thus, it appears that the first sentence of this section of the statute relates to conversions involving foreign,

rather than Colorado, entities, and to organic statutes of Colorado, if any, that are applicable to entities engaged in specific lines of business and that might affect the effectiveness of a conversion.

As to Colorado entities generally,⁵⁵ a conversion is effective when the statement of conversion is effective pursuant to CRS § 7-90-304. This statute provides that a filed statement, including a statement of conversion, is effective when it is filed unless the filed statement contains a delayed effective time or date. If a statement of conversion contains a delayed effective time or date, the statement becomes effective at that time or on that date.⁵⁶ CRS § 7-90-201(b) does not, on its face, state that the constituent filed document for the resulting entity (if one is required to be filed under CRS § 7-90-301(5.5)) also must be filed for the conversion to be effective, but this is almost certainly true.⁵⁷ It may be that the Secretary of State will not allow a statement of conversion to be filed without the simultaneous or subsequent filing⁵⁸ of any required constituent filed document for the resulting entity.

In conversions in which no statement of conversion or constituent filed document is required to be filed, the conversion becomes effective at the time and on the date determined by the owners of the converting entity.⁵⁹ Interestingly, Article 90 does not require that the determination (or for that matter the approval or any other evidence of the conversion) needs to be in writing.



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EFFECT OF CONVERSION

The effect of conversion of an entity is clearly stated in CRS § 7-90-202(4): “The resulting entity is the same entity as the converting entity.” No transfer of assets or liabilities takes place. As noted in the discussion below, this “same entity” language is useful in effecting conversions and minimizing the disruption of the converting entity’s business. Several consequences result from conversions, and practitioners should pay close attention to these consequences so as to avoid problems.

No Dissolution

A conversion does not interrupt the continuous existence of the converting entity. CRS § 7-90-202(3) provides:

Unless otherwise agreed or otherwise provided by the organic statutes, other than this article [90], the converting entity shall not be required to wind up the entity’s affairs or pay obligations and distribute the entity’s assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of the resulting entity.

Presently, there are no organic statutes applicable to Colorado entities generally, or to any specific form of Colorado entity generally, that make a conversion an occasion for winding up or the cause of a dissolution of the converting entity. If such a statutory requirement exists, it would relate to an entity in a particular line of business. However, the author is not aware of the present existence of any such requirements. Pursuant to CRS § 7-90-202(2), however, the owners could always agree that a conversion is the occasion for a winding up or dissolution, although, in the abstract, it seems a rather unusual response to a conversion.

Liabilities

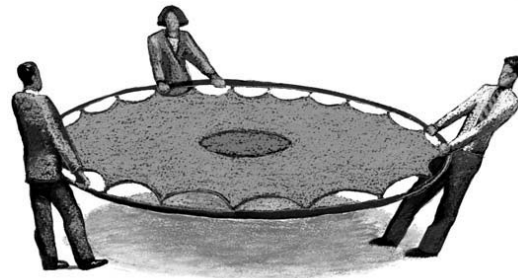
A conversion does not affect the obligations of the converting entity incurred prior to the conversion⁶⁰ nor is the personal liability of any person incurred prior to the conversion affected.⁶¹ Thus, for example, if a GP converts to an LLC, the general partners of the GP remain personally liable for obligations the GP incurred prior to the effective date of the conversion. Following the conversion, however, the general partners who become members of the resulting LLC are not personally liable for obligations the LLC incurs after the conversion is effective.

Some types of conversions are not favorable to creditors. Entities, the owners of which have general liability, can convert to a form of entity with limited liability. The creditor may never know of this change. The creditor could learn of it by searching the records of the Secretary of State, but this is not a usual practice. The creditor might be notified, but it may not be in the interest of the converting entity to give such a notice. The creditor might be put on notice if the entity name changes, but in many cases the name the entity uses in transacting its business will not change.⁶²

This treatment of creditors is not unique to the conversion statute. It is consistent with the policy adopted years ago when the requirement that a trade name include the same limited liability identifier as an entity name was dropped from the trade name statute.⁶³

Unintended Effects Of a Conversion

As practitioners think through the implications of conversion, subtle issues may begin to surface. Unintended changes



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may occur, especially if the goal, as a business matter, is to maintain the *status quo* for the owners and the managers of the converting entity. For example, the owners of some entities enjoy statutory rights that the owners of other entities do not enjoy. Also, for example, corporate shareholders of corporations formed prior to July 1, 1994 enjoy preemptive rights.⁶⁴ If one of those corporations is converted to another form of entity, those preemptive rights could be lost. The CBCA grants to corporate shareholders dissenters' rights,⁶⁵ exercisable upon certain occasions. These rights may be lost in a conversion to another form of entity unless they are contractually provided for.

On the other hand, these rights will be gained in the conversion of an entity into a Colorado corporation unless they are waived. Statutory rights to books and records⁶⁶ and rights to indemnification and reimbursement, for example, vary among different forms of entities,⁶⁷ so these rights are affected by a conversion, even if nothing is said about them in the constituent documents of the resulting entity.

Indeed, in some conversions, particularly when the resulting entity is a corporation, rights will be granted that cannot be waived or altered in the constituent documents. Organic statutes for corporate-type entities are not as flexible as the non-corporate organic statutes; generally, unless the corporate law expressly allows the constituent documents to override provisions of the organic statute, provisions at variance with the organic statute are not enforceable. Noncorporate organic statutes, however, tend to favor contractual flexibility, and their provisions generally can be overridden by contract, unless expressly prohibited. Thus, unintended effects will be more difficult, and sometimes impossible, to ameliorate when converting into the corporate form. In all cases, practitioners should consider as many of the acquired and lost rights as possible when undertaking a conversion.

Changes in management powers, duties, and authority caused by a conversion also should be considered in every conversion. In a corporation, to replicate fully the management powers, duties, and authority of the general partner of a GP or of the members of a member-managed LLC takes careful drafting. In converting a corporation to a partnership or an LLC, the balance of power between the shareholders, directors, and officers will be lost, unless similar concepts are incorporated into

the constituent operating documents of the resulting partnership or LLC. The differences in the duties of shareholders to one another and the duties of partners to one another are significant. Moreover, the differences in the duties of directors to a corporation, general partners to a partnership, and managers to an LLC are subtle, but also may be significant to the parties involved. Any changes in duties resulting from the conversion should, at least, be thought about ahead of time.

The power to amend either or both of the constituent documents and the operating documents also might inadvertently change in a conversion and, thus, always should be evaluated. A change in the power to amend is particularly likely to occur in cases where rights that typically appear in the operating documents of the converting entity (for example, virtually all rights in the operating documents of a noncorporate entity) are split between the constituent documents and the operating documents of the resulting entity (such as the articles of incorporation and bylaws of a corporation or nonprofit corporation).

If the procedure and vote required for an amendment to the constituent filed documents differ from an amendment to the constituent operating documents, there may be an inadvertent power shift in the resulting entity. This is because the amendment of a particular provision in the operating documents becomes harder or easier following the conversion, depending on whether the provision finds its way into the constituent documents or the operating documents. In short, in undertaking a conversion, practitioners must look below the surface for potential unintended consequences of the conversion.

TAX CONSIDERATIONS

The conversion of an entity should not be undertaken without adequate tax counsel. What state law makes so easy to do, the Internal Revenue Code in some instances makes painful (or at least expensive). The chart, entitled "Appendix III, Entity Conversions—Tax Treatment," at the end of this article summarizes in very general terms the tax results of the various types of conversions. The tax laws do not look exclusively to the state law form of an entity to determine its method of taxation. Indeed, under the "check-the-box" regulations,⁶⁸ an entity of a particular state law form can be treated in a variety of ways under the tax laws. Accordingly, Appendix III presents the conversion of entities not from the perspective of the

various state law forms, but from their taxation method.

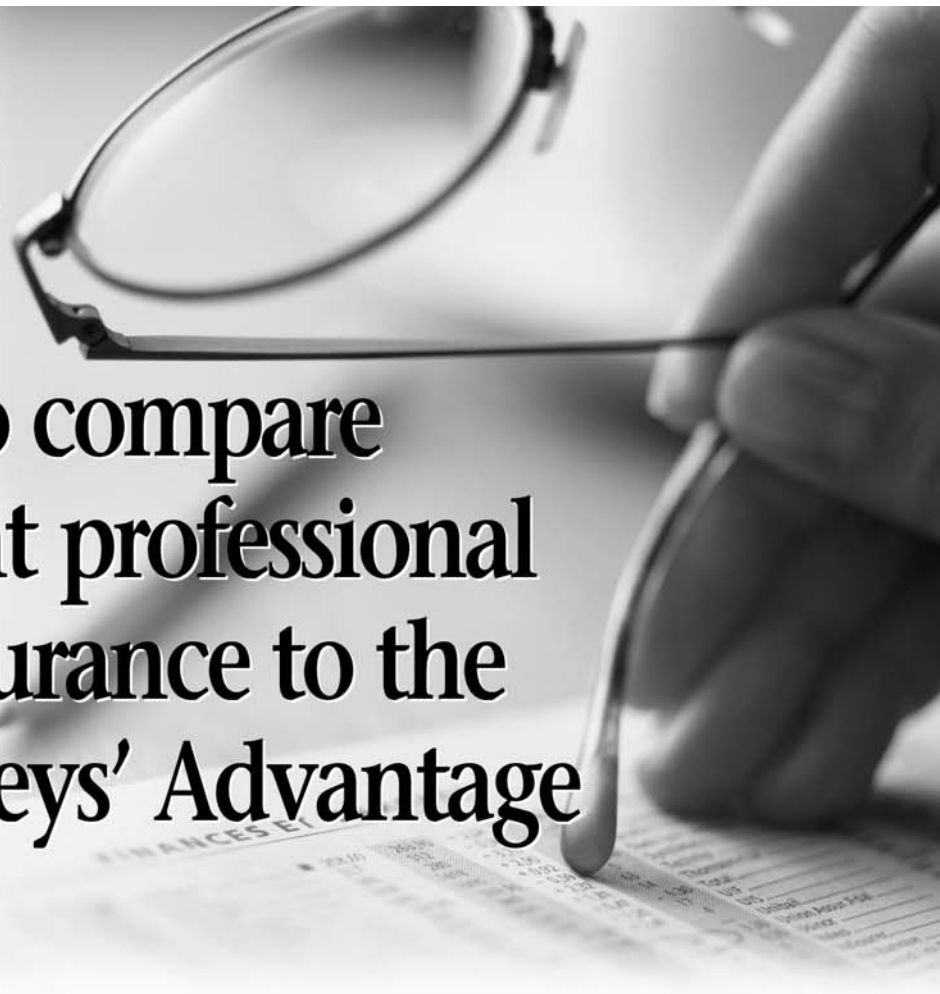
An LLC, for example, can be treated for federal income tax purposes (and, thus, Colorado income tax purposes) in any of five ways: as a corporation, S corporation, partnership, tax-exempt entity, or disregarded entity (that is, an entity that is not separate from its owner). Not all forms of entities can be treated in any of these five ways, but many can be treated in more than one of these ways for tax purposes.

As can be seen from Appendix III, some conversions are taxable transactions. Generally, when entities that are treated as corporations for tax purposes are converted into entities that are taxable as partnerships, there will be immediate tax consequences. When tax-exempt entities are converted from one form into another, they may not automatically lose their tax-exempt status, but the Internal Revenue Service takes the position that the entity must re-apply for its tax-exempt status, generally not a welcome result.

Other conversions are relatively benign from a tax standpoint. Generally, entities treated as partnerships for tax purposes that are converting to other forms of entities treated as partnerships for tax purposes can do so without significant adverse tax effects. The same is true if they convert to a form of entity treated for tax purposes as a corporation. The conversion of entities that are disregarded for tax purposes under the "check-the-box" regulations generally can be converted into entities treated as corporations or partnerships for tax purposes without adverse tax consequences.⁶⁹

Every conversion, however, needs to be examined from a tax standpoint. For example, although a conversion of a partnership-type entity into corporate-type entity generally is not a taxable transaction, the form of the conversion may affect whether the tax year closes, the holding period for assets of the entity, and the basis of assets owned by the entity, as well as the basis of the owners' interests in the entity.⁷⁰ The treatment of these matters, in turn, can have immediate or later tax consequences that must be taken into account. Generally, any change in the ownership of the entity that takes place in the course of a conversion also must be analyzed from a tax standpoint.

Following a conversion, the taxpayer identification number ("TIN") of the entity may change, even though the resulting entity is the same entity as the converting entity for state law purposes. Corporate-



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type entities that convert into partnership-type entities generally will need a new TIN. Partnership-type entities converting into partnership-type entities, where the partnership continues for tax purposes, generally will not need a new TIN. A disregarded entity that converts may not have a TIN; when it converts, it may need one.⁷¹ The need for a TIN, or a new TIN, has to be determined in connection with a conversion.

BUSINESS CONSIDERATIONS

Conversions do not occur in a vacuum. Entities have assets and business activities that may be significantly affected by a conversion. Accordingly, careful thought must be given to the practical consequences of a conversion. The balance of this article considers some of the more common results of a conversion.

Change of Name

As indicated in the example discussed above in connection with the effect of a conversion on creditors, an entity that converts may or may not experience a name change. A change of name generally is required if the resulting entity needs a different limited liability identifier (such as Inc., LLC, or LLP) than is required of the converting entity. Thus, an LP named "ABC, L.P." converting to a corporation would experience a name change because "L.P." is not a permitted limited liability identifier for a corporation.⁷² However, an LP named "ABC, Ltd." converting to a corporation or an LLC would not need to change its name because "Ltd." is a permissible limited liability identifier for corporations and LLCs, as well as LPs.⁷³

A change of name might not be required, but certainly would be the better practice where a limited liability entity is being converted into a general partnership or unincorporated association—neither of which is required to have a limited liability identifier. Although laws governing entity names and trade names do not prohibit a general partnership or unincorporated association from doing business under a name that includes a limited liability identifier, it is misleading and is considered to be bad practice to do so. It is also generally considered bad form to have limited liability entities doing business under an inappropriate limited liability identifier, even though it can be done legally by including the inappropriate identifier in a trade name.

Changing an entity name is usually a hassle, involving changes in business cards, stationery, advertising materials, signs, and the like. If the entity does business in a trade name without a limited liability identifier (which is permitted), the number of things that needs to be changed is considerably reduced. However, there may be a legal risk in doing so. Although there are no published opinions on whether the shield of limited liability is lost if the existence of that shield is not disclosed, in a significant agency case, the Colorado Supreme Court held an agent of an LLC personally liable to the persons with whom he was dealing when he failed to disclose that he was acting in his capacity as an agent for an LLC.⁷⁴ Also, prior to undertaking a conversion, practitioners should determine that the proposed name of the resulting entity is a name that is available in the records of the Secretary of State.

Trade Names and Intellectual Property

A trade name for a converting entity filed in the records of the Secretary of State pursuant to CRS § 70-71-101 will remain the trade name of the resulting entity in those records if the resulting entity is of a type that has its trade name filed in the records of the Secretary of State.⁷⁵ If the resulting entity is not one of those types, it will have to register its trade name with the Department of Revenue pursuant to CRS § 24-35-301. Because the entity remains unchanged in a conversion, any common-law goodwill in the trade name will belong to the resulting entity. Trademarks registered with the Colorado Secretary of State pursuant to CRS §§ 70-70-101 *et seq.* also will follow the conversion and become that of the resulting entity without a separate filing. For federal registrations of patents, trademarks, and copyrights, change of name forms may be used to recognize changes in the name of the holder resulting from the conversion.⁷⁶

Bank Accounts

One of the first practical matters that should be addressed following a conversion is the entity's bank accounts. The name on each account should be changed to reflect the new name, the form of entity, and the jurisdiction of formation of the resulting entity. If there is a change in the form of the entity or the jurisdiction of its formation, the bank may require new au-

thorizing resolutions appropriate to the new form of entity.

In the author's experience, banks may be lax in their requirements following a conversion, as long as the TIN of the entity stays the same. A limited liability entity should be concerned, however, that its checks reflect the correct name of the entity, because proper bank accounts are, in "piercing the corporate veil" cases, one of the indicia that corporate formalities have been followed.⁷⁷

Contracts

Prior to effecting a conversion, it would be prudent to inspect the converting entity's contracts to be certain that none of the entity's contractual rights will be impaired by the conversion. Because the entity stays the same in a conversion, an assignment of the contract does not take place; thus, a conversion should not pose a problem. The types of contract clauses that deserve attention, however, are those that impose notice, consent, or other requirements relating to changes in the name or changes in the form of the entity. Particular attention should be paid to loan and franchise agreements, which generally have comprehensive clauses regarding changes in the contracting parties that could be problematic in a conversion.

Governmental Permits and Regulated Activities

Entities that are subject to governmental regulation or whose businesses are dependent on governmental licenses or permits should determine in advance that no regulatory requirement is violated or license or permit is voided or adversely affected by the conversion. In addition, any requirements for notice or other action required by the governmental agency or the permit before or following a conversion should be identified in advance and complied with. Some conversions may not be possible for the simple reason that some regulatory agencies have not kept pace with the proliferation of new legal entities and, thus, under existing regulations, some businesses cannot be conducted in certain forms of entities.

This is particularly true, for example, with LLCs, which, despite their proliferation, have not found their way into many governmental regulations and procedures. No practitioner welcomes a notice from a governmental agency stating that it does not issue a certain permit to LLCs, but only to corporations and partnerships.

Title to Real Property

The instruments effecting conversions are filed in the records of the Colorado Secretary of State. If an entity owns real property, to preserve the sanctity of title to its real property, the conversion also needs to be reflected in the real estate records. These are located in the office of the clerk and recorder of the county in which the entity's real property is located.⁷⁸

Title examiners hope to find in the clerk and recorder's grantor/grantee index consistency in the name, form, and jurisdiction of formation of the entity that acquired title to a parcel in real property and of the party that makes a subsequent disposition of that real property or interests therein. Any inconsistencies are usually reported as exceptions to title. Conversions often will result in changes that should be reflected in the real estate records.

The Colorado Bar Association Title Standards Committee has addressed conversions in a Title Standard.⁷⁹ Title Standard 9.6.2 provides the following (in the usual format for a Title Standard, a problem followed by an answer):

9.6.2: Conversion or Merger of Entities.

Problem: Several Colorado statutes provide that certain forms of entities may convert to a different form of entity or merge with the same or a different form of entity. If, pursuant to any Colorado Statute which provides for such conversion or merger and for filing evidence of such conversion or merger with the Colorado Secretary of State, an entity holding title to real property converts from the form of entity in which such title was acquired to another form of entity or merges with the same or another form of entity, what document or documents should be recorded to evidence such conversion or merger?

Answer: One of the following should be recorded in the county in which such real property is located: (i) the document to be filed with the Secretary of State evidencing such conversion or merger and containing evidence of such filing, or (ii) any document issued by the Secretary of State evidencing such conversion or merger.

Thus, an inconsistency in the real estate records caused by the conversion of an entity, insofar as marketability of title is con-

cerned, is cured by recording a certified copy of the filed statement of conversion in the real property records of the county in which the entity's real estate is located. Title Standard 9.6.2 does not address what should, or may, be done if no statement of conversion is required to be filed.

An inconsistency in record title caused by a conversion also can be cured by recording a deed from the converting entity to the resulting entity. Recording a deed, however, suggests that a conveyance of the property has occurred, and the recording may create unwelcome questions and undesired problems. For example, recording a deed may raise questions under due-on-sale clauses in secured loan documents or under transfer tax ordinances as to whether a transfer of title to the real property has occurred.⁸⁰ These questions generally can be avoided by recording a certified copy of the filed statement of conversion rather than a deed.

Title Insurance

Entities that own real property usually have title insurance coverage. The most common form of coverage in Colorado is

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pursuant to the American Land Title Association ("ALTA") Owner's Policy (Form B, Rev. 10-17-92). Title insurance coverage under this type of policy (as well as its predecessors) is not impaired by the conversion of the insured entity. In a conversion, there is no change in the entity, so the resulting entity remains the insured under the title insurance policy. The definition of the "insured" under the ALTA form of Owner's Policy is as follows:

The insured named in Schedule A [the Schedule in which the insured party is named], and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

Nevertheless, practitioners may find it useful or comforting to have the title insurance policy endorsed to reflect whatever has been changed (such as the name, form of entity, or jurisdiction of formation) in the conversion. Change of name endorsements are usually available from title companies, for a small fee.

Fairway Endorsements

For most real estate practitioners, changes to entities bring to mind the specter of *Fairway Development Co. v. Title Insurance Co. of Minnesota*.⁸¹ In that case, the court excused the title insurer from liability under a policy for title insurance because, the court held, under Ohio's general partnership law, a change in the partners resulted in the dissolution and termination of the insured partnership and the formation of a new, uninsured partnership. That case brought about the practice of obtaining "Fairway endorsements" to continue title insurance coverage in situations in which a dissolution of the insured entity occurs, but where the insured entity continues its business.

Conversions do not result in the dissolution of an entity by statute; accordingly, a Fairway endorsement generally is not required. However, a Fairway endorsement would be useful if the constituent documents of the entity or another agreement provide for dissolution on conversion and the business is permitted to be continued on the occurrence of some other additional event, such as a vote of the owners. In that situation, a properly worded Fairway endorsement⁸² will provide for

continued title insurance coverage, despite the conversion and the dissolution caused by it.

Real Property Transfer Taxes and Sales Taxes

Many resort communities in Colorado impose a tax on the transfer of real property.⁸³ A conversion should not trigger such a tax because the converted entity is the same entity as before and no transfer of real property is involved in a conversion. Nevertheless, any relevant transfer tax ordinance should be reviewed. No sales or use tax is payable upon a conversion because there is no transfer of assets.⁸⁴

Deeds of Trust and Mortgages

Deeds of trust or mortgages that encumber real property often contain so-called "due-on-sale" clauses. The wording of such clauses varies considerably. Accordingly, prior to effecting a conversion of an entity that owns encumbered real property, practitioners should read the deed of trust or mortgage to determine whether any covenant is violated by the conversion. Due-on-sale clauses that focus on a transfer of title to the real property would not be violated by a conversion because no transfer takes place.

Prohibitions or requirements relating to conversions increasingly are found in real estate loan documents, because lenders are concerned about the legal implications to them when a conversion takes place. Commonly seen clauses prohibit any change in the "form" of the borrower. Another common provision is the requirement that the lender be notified of any change in the name of the debtor, the form of entity, or the jurisdiction in which it is organized. The discussion below related to Uniform Commercial Code ("UCC") filings explains the appropriateness of this latter type of provision.

Leases

Prohibitions or restrictions on the assignment of leases are commonplace. These no-assignment clauses are often drafted with detail similar to that found in deed of trust due-on-sale clauses. A converting entity does not violate a no-assignment provision because no transfer of the converting entity's interest in the lease takes place in a conversion. Conversions can cause difficulties in leases, how-

ever, if a no-assignment clause, or another clause, expressly prohibits conversions or related changes, such as changes in the form of the entity. Landlords who have perfected security interests in assets of their tenants, or who are beneficiaries of letters of credit used as security deposits, might want to require prior notice of a tenant's conversion to avoid the problems created by conversion, discussed in the next two sections.

UCC Filings

Under Article 9 of the UCC as adopted in Colorado,⁸⁵ with some exceptions, the law governing perfection of a security interest is determined by the debtor's location.⁸⁶ The location of a debtor depends, in part, on whether the debtor is a registered organization.⁸⁷ A registered organization is defined as "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized."⁸⁸ In Colorado, registered organizations are those domestic entities for which a constituent filed document is required for formation (for example, corporations, nonprofit corporations, cooperatives, LPs, LLPs, LLLPs, LLCs, and LPAs).

Under Article 9 of the Colorado UCC, a registered organization that is organized under the law of a state is located in that state.⁸⁹ Thus, a Colorado corporation, for example, is located in Colorado.⁹⁰ Also under Article 9 of the Colorado UCC, perfection of security interests by filing a financing statement is accomplished by filing with the Secretary of State of the state in which the debtor is located.⁹¹ Accordingly, when a foreign debtor that is a registered organization converts into a Colorado entity that is a registered organization, a UCC financing statement showing the resulting Colorado entity as debtor should be filed with the Colorado Secretary of State.

Similarly, when a Colorado debtor that is a registered organization is converted into a foreign entity that is a registered organization, a UCC financing statement showing the resulting entity as debtor should be filed with the filing office of the foreign jurisdiction in accordance with Article 9 of the UCC as in effect in that foreign jurisdiction. Thus, for example, if a Colorado LLC converts into a Delaware corporation, a UCC financing statement should be filed in Delaware in accordance with Article 9 of the UCC as in effect in

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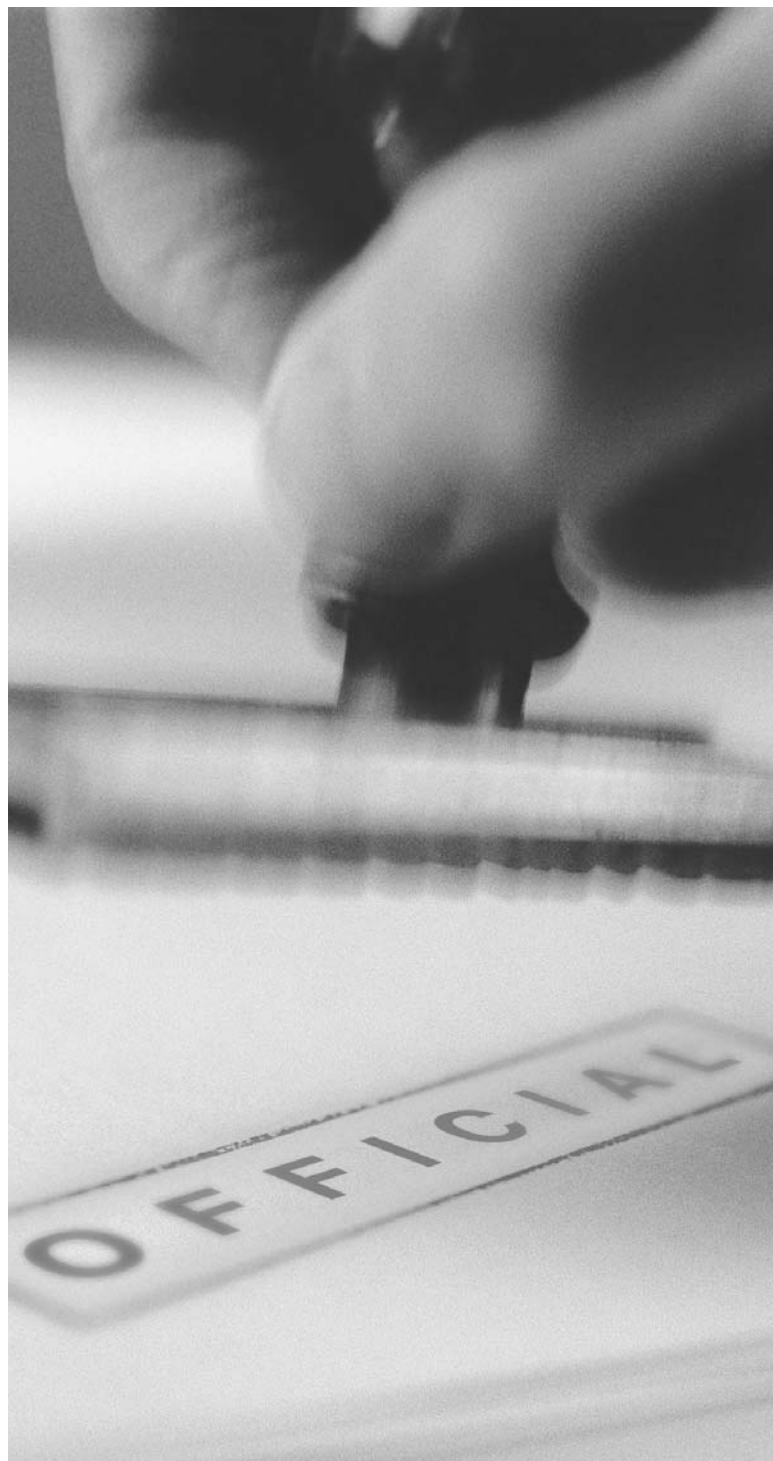
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Delaware. If this does not occur, the existing security interest remains perfected, but only for four months, or less if perfection otherwise lapses before the expiration of the four-month period.⁹²

A debtor that is an organization, but not a registered organization, is located either at its place of business if it only has one location or at its chief executive office if it has more than one place of business.⁹³ If such an organization is converted so that it becomes a registered organization, the place where it is located may change, even if its place of business or chief executive office does not change. For example, the location of a Colorado GP, with its sole place of business in Colorado, will change to Delaware if the GP converts to a Delaware corporation, even if it maintains its sole place of business in Colorado. In this case, the place to file a financing statement for the entity will change from Colorado to Delaware, and any security interest perfected by filing a financing statement in the Colorado Secretary of State's Office will remain effective only for four months after the conversion (assuming it does not otherwise lapse earlier). A new financing statement should be filed in Delaware in

accordance with the UCC as in effect in Delaware to avoid a lapse in perfection.

Following a conversion in which the resulting entity's name is different than the converting entity's name, it will be appropriate to amend any existing financing statement that has the converting entity as a debtor. An amendment also may be appropriate if the type of organization, jurisdiction of organization, or organizational identification number is stated in a financing statement and has changed.

When the converting entity is the debtor and its name changes, whether an amendment is required to maintain the effectiveness of a financing statement will turn on whether the change in name resulting from the conversion makes the financing statement "seriously misleading." Under CRS § 4-9-507(c), if a debtor so changes its name that a filed financing statement becomes seriously misleading, the effectiveness of the financing lapses four months after the change in name, unless the financing statement is amended appropriately.

The most common change in a debtor's name resulting from a conversion, if there is one at all, will be in the limited liability

identifier. Does a change in the limited liability identifier, by itself, make the debtor's name as shown in the original financing statement "seriously misleading"? The answer to that is not clear from the UCC. Under CRS § 4-9-503(a),

a financing statement sufficiently provides the name of the debtor: (1) [i]f the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized. . . .

It is clear that a limited liability identifier is part of an entity's name. Given the Colorado Secretary of State's new name rules,⁹⁴ in which limited liability identifiers make entity names distinguishable, an incorrect limited liability identifier makes the name of an organization insufficient. Under CRS § 4-9-506(c), however,

[i]f a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 4-9-503(a), the name



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provided does not make the financing statement seriously misleading.

In a case where a debtor converts to a different form of entity and the limited liability identifier in the debtor's name changes, the search logic of the Colorado Secretary of State UCC records probably would reveal the debtor under both its converting entity name and its resulting entity name, as well as other entities with similar names. This is because the search logic reveals the name searched and names containing similar terms. Since a difference in the limited liability identifier will distinguish one entity from another, however, it does not seem safe to conclude that the search logic will disclose a financing statement showing the converting entity's name if the search is made in the resulting entity's name. The only safe way to ensure the effectiveness of a financing statement for more than four months after a name change caused by a conversion is to amend the financing statement to reflect the true name of the resulting entity.

Because of the new UCC Article 9 rules discussed above, lenders now often require in their security agreements that

notice be given by debtors of, among other things, any change in the name or the state of organization of the debtor. Prior to effecting a conversion of an entity, therefore, practitioners should look for and comply with any notice requirements and, if necessary, when the conversion is effective, file the appropriate UCC financing statements or amendments thereto.

Letters of Credit

Letters of credit should be included in this discussion of conversions because many standby letters of credit have conditions for drawing that require statements from specified persons. Under the rule of strict compliance,⁹⁵ inconsistencies between the required statement and a statement that can be made truthfully following a conversion may be a basis for the issuer to dishonor drafts drawn under the letters of credit. For example, if the terms of a letter of credit require a statement from the "President of ABC Corporation," the issuer of the letter of credit might not accept a statement signed by the "Manager of ABC Limited Liability Company." This is true even if ABC Limited Liability

Company is the resulting entity in a conversion of ABC Corporation and, under the terms of the conversion, the President is now the Manager. In general, however, the beneficiary of a letter of credit should not be adversely affected by a conversion because the beneficiary remains the same entity as before, and no transfer of the letter of credit takes place in a conversion.

Other Business Matters

Although a conversion does not involve a transfer of assets, many of the same issues that arise in an asset transfer or a merger may arise in the conversion.⁹⁶ Thus, a certain amount of "due diligence" must be undertaken before effecting a conversion. The business matters discussed above are the most likely to need attention in a conversion, but every business requires its own analysis.

CONCLUSION

Conversion is a wonderful tool in the business world. However, it is not as simple as first appears. The conversion of an entity has many legal implications and should be undertaken only with careful

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thought and planning. The proper approvals must be obtained. The unintended consequences of the conversion must be considered and addressed. The tax ramifications must be analyzed and numerous business matters must be attended to. Only then is it safe to do the easy part, deliver the filings.

NOTES

1. This refers to forms of entities that can be formed under current law. Entities that cannot now be formed cannot be resulting entities in a conversion (*e.g.*, 1931 LPs). Although the statute does not say this expressly, presumably, any entity converted into a GP will be governed by CUPA rather than the UPL. Any entity converted into a LP will be governed by the UPL unless it elects to be governed by CUPA, pursuant to CRS § 7-62-1104(1)(c).

2. See H.B. 02-1147, H.B. 02-1456, H.B. 03-1377, and H.B. 04-1398.

3. Article 90, Title 7 of CRS, having as its short title, "The Colorado Corporations and Associations Act."

4. As of October 2004, there are 165 cooperatives and 95 limited partnership associations, according to the records of the Colorado Secretary of State.

5. See CRS § 7-90-102(13).

6. *E.g.*, corporations not for profit, Article 40; flume and pipeline companies, Article 43; water users' associations, Article 44; toll road companies, Article 45; cemetery companies, Article 47; business development corporations, Article 48; and older housing preservation corporations, Article 49.

7. *E.g.*, religious, educational, and benevolent societies, Article 50; joint stock religious or benevolent associations, Article 51; and churches and religious societies, Article 52.

8. They cannot be converted under any other provision of Colorado law either. Some states provide for trusts (such as Massachusetts or Maryland business trusts) that are entities. These are included in the definition of "foreign entity" contained in CRS § 7-90-102(23) and, thus, may be either a converting entity or a resulting entity under Article 90.

9. See Reeves, "Partnership Status of Joint Ventures in Colorado," 24 *The Colorado Lawyer* 2553 (Nov. 1995); Sabian and Steiner, "Partnership Status of Joint Ventures in Colorado: Editorial Comments on CRS § 38-30-166," 25 *The Colorado Lawyer* 61 (Feb. 1996).

10. See CRS § 7-90-201(2). "Foreign entity" is defined in CRS § 7-90-102(23). Note that these conversion provisions permit what is called a "redomestication" under some state statutes.

11. As defined in CRS § 7-90-102(29.5).

12. See CRS § 7-90-202(4) and the discussion in this article regarding the effect of conversion.

13. CRS § 7-90-202(3).

14. *Id.*

15. CRS § 7-42-101(2).

16. See, *e.g.*, Delaware Code § 18-212.

17. Delaware Code § 18-213.

18. CRS § 38-33.3-301.

19. CRS § 7-90-206.

20. *E.g.*, homeowners associations must be corporations, nonprofit corporations, corporations not for profit, or LLCs under CRS § 38-33.3-301.

21. *Cf.* CRS § 7-90-203(4)(c)(I), dealing with mergers and providing for the most stringent provisions to apply.

22. CRS § 7-90-201(4)(c)(I), (II), and (III).

23. See CRS § 7-90-102(50), in conjunction with subsections (4), (7), and (47).

24. CRS § 7-90-201(4)(c)(III).

25. CRS § 7-64-101(20) defines "partnership agreement" in a way that makes it clear that, absent a contrary provision in the partnership agreement, unanimous consent of the partners is required to amend the partnership agreement.

26. *Cf.* CRS § 7-90-203(4)(c)(I), dealing with mergers and providing for the most stringent provisions to apply.

27. In which case, approvals at both levels are required under CRS § 7-90-201(4)(c)(I).

28. See CRS § 7-110-102.

29. CRS § 7-110-102.

30. See, *e.g.*, CRS § 7-110-104.

31. CRS § 7-90-201(4)(c)(I).

32. For class voting, see CRS § 7-107-207, which generally extends the foregoing principles to each class entitled to vote separately.

33. See CRS § 7-111-103(5).

34. See CRS § 7-112-102(6).

35. CRS § 7-80-107 statutorily makes the test for "piercing the corporate veil" as to an LLC the same as that for a corporation. CRS § 7-64-1009 provides essentially the same for LLPs and LLLPs governed by CUPA.

36. Compare CRS §§ 7-30-106 and 7-126-103.

37. It is not clear whether the rights of owners whose liability will change can be waived in a constituent document. Presumably, the consent can be given in advance, in a constituent document or elsewhere.

38. CRS § 7-90-201(4)(a).

39. CRS § 7-106-101.

40. CRS § 7-90-201(4)(a).

41. *E.g.*, certain classes of owners and managers are personally liable under some state tax laws. Whether any such change in liability is "solely by being an owner" is debatable.

42. CRS § 7-90-201(5.5).

43. See CRS § 7-90-301.5.

44. CRS § 7-90-201(5).

45. *Id.*

46. CRS § 7-90-301(3).

47. *Id.*

48. As a result, there will not necessarily be a public record of the conversion.

49. See CRS § 7-90-301(1).

50. CRS § 7-90-202(5.5).

51. CRS § 7-90-204.5(1)(a).

52. CRS § 7-90-204.5(1)(c).

53. CRS § 7-90-204.5(1)(b). The provision appears to be redundant in light of CRS § 7-90-

206, which provides that any conversion under Article 90 is subject to any grant of dissenter's rights upon conversion pursuant to any applicable organic statute or the common law.

54. CRS § 7-90-201(6).

55. *Id.*

56. CRS § 7-90-304(2).

57. The author's view is based on consultation with the Secretary of State's Office and the Legislative Drafting Committee.

58. See CRS § 7-90-304(4) regarding simultaneous filings by the Secretary of State.

59. CRS § 7-90-201(6). Note that the statute does not require the owner's determination to be in writing.

60. CRS § 7-90-202(2).

61. *Id.*

62. See the discussion regarding change of name and trade names below.

63. H.B. 94-1131 effected this change in the trade name law.

64. CRS § 7-106-301.

65. See CRS §§ 7-113-101 *et seq.*

66. *Cf.* CRS §§ 7-80-408 (LLCs) and 7-116-101 *et seq.* (corporations).

67. *Id.*

68. Treas. Reg. §§ 301.7701-2 *et seq.*

69. *Id.*

70. See Frost, "The Federal Income Tax Consequences of Business Entity Conversions," 26 *J. of Real Estate Taxation* 83 (1999).

71. "Employer ID Numbers (EIN)—Do You Need a New EIN?" available on the IRS website at <http://www.irs.gov/businesses/small/article/0,id=98011,00.html>.

72. CRS § 7-90-601(3)(a).

73. CRS § 7-90-601(3)(a), (c) and (d).

74. See *Water, Waste & Land, Inc. d/b/a WESTEC v. Lanham*, 955 P.2d 977 (Colo. 1998). The court stated, "The 'missing link' between the limited disclosure made by Clark and the protection of the notice statute was the failure to state that 'P.I.L.' the Company, stood for 'Preferred Income Investors, L.L.C.'" (*Emphasis in original.*) *Id.* at 1004.

75. These types of entity include a corporation, LP, LLP, LLLP, LLC, LPA, or nonprofit entity that has elected to file a statement of trade name under CRS § 7-71-103.

76. CRS § 4-9-316(a)(2). Note that if the conversion was accomplished by the formation of a new entity and a merger of the Colorado entity into the Delaware entity, the financing statement would lapse only after one year under CRS § 4-9-316(a)(3). In an Article 90 conversion, there may be a change in the debtor's location, but there is not a transfer of collateral. Thus, the four-month rule in subsection (2) applies and not the one-year rule of subsection (3). See also Example 4 to the Official Comment to CRS § 4-9-316.

77. See, *e.g.*, *Leonard v. McMorris*, 63 P.3d 323 (Colo. 2003). See also Eismeier and Dindinger, "The Alter Ego Doctrine in Colorado," 28 *The Colorado Lawyer* 53 (March 1999).

78. CRS § 38-35-106.

79. A copy of the Title Standards is available to members of the Colorado Bar Association on the home page of the Real Estate Law Section at <http://www.cobar.org>. They are also available for a fee from Attorneys' Title Guaranty Fund, 999 18th St., Suite 1101, Denver, CO 80202.

80. See discussion in this article below regarding real property transfer taxes. The documentary fee usually can be avoided by indicating that it is a deed for no consideration. See also CRS § 39-13-102(2)(a).

81. *Fairway Development Co.*, 621 F.Supp 120 (N.D. Ohio 1985).

82. The wording of a "Fairway endorsement" needs to be scrutinized because the language

is not standard. Often, such endorsements say little more than that coverage continues if no dissolution occurs. What the insured wants it to say, however, is that coverage continues *even though* a dissolution has occurred, because the entity is continuing the business.

83. See, e.g., Breckenridge Town Code §§ 3-3-1 *et seq.*; City of Aspen Municipal Code §§ 23.48.010 *et seq.*

84. CRS §§ 39-26-101 *et seq.*

85. CRS §§ 4-9-101 *et seq.*

86. CRS § 4-9-301.

87. See CRS § 4-9-307.

88. CRS § 4-9-102(a)(73).

89. CRS § 4-9-307(e).

90. See *id.*

91. See CRS §§ 4-9-310 and -501.

92. CRS § 4-9-316(a)(2).

93. See CRS § 4-9-307(b)(2) and (3).

94. Available on the Secretary of State's website: <http://www.sos.state.co.us>, under "Business Center."

95. See CRS § 4-5-108(a).

96. See (in this issue) Fogler and Witwer, "Buying, Selling, and Combining Businesses in Colorado," 33 *The Colorado Lawyer* 73 (Nov. 2004). ■

Appendices follow on page 30.

New ATLA/eJury Alliance Offers Savings On Online Mock Juries and Focus Groups

The Association of Trial Lawyers of America ("ATLA") and eJury, L.L.C. ("eJury") recently announced an alliance that enables ATLA's members to use eJury's online mock juries and focus groups at reduced rates. This ATLA/eJury alliance furthers ATLA's efforts to introduce innovative and valuable legal resources to its members.

Through its national database of jurors, e-Jury is able to provide valuable pre-trial feedback from practically any venue in the nation. The feedback helps attorneys find the facts of a case to emphasize and develop case themes, test jury arguments, and discover public attitudes. ATLA members who submit cases to eJury will receive a 10 percent savings off standard rates.

ATLA was founded in 1945 and is headquartered in Washington, D.C. The association boasts more than 59,000 members worldwide, making it the world's largest trial bar association. It is a broad-based, international coalition of attorneys, law professors, paralegals, and law students. ATLA works to preserve the constitutional right to trial by jury. The association "promotes justice and fairness for injured individuals, and inspires quality in advocacy through training and education." ATLA also provides its members with litigation resources and networking tools to better serve clients. For more information about ATLA, visit <http://www.atla.org>.

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APPENDIX I:
Domestic Entity Conversions—Ownership and Management Issues
(Top: Resulting Entity; Side: Converting Entity)

	Corporation	Nonprofit Corporation	General Partnership	Limited Partnership
C o r p o r a t i o n	N/A	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes</p> <p>Ownership: shares become memberships or are eliminated; shareholders become members or are taken out and nonprofit corporation operates without members</p> <p>Change in liability: none</p> <p>Management: must appoint or continue one or more directors and may continue or appoint officers</p> <p>Constituent operating documents: new articles of incorporation required; may continue or revise bylaws, if any</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least two partners; shares become partnership interests; shareholders become partners if not taken out</p> <p>Change in liability: shareholders who become partners assume liability for obligations of the partnership</p> <p>Management: board of directors and officers should be eliminated; management is by partners</p> <p>Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least one general and one limited partner; shares become general or limited partnership interests; shareholders become general or limited partners if not taken out</p> <p>Change in liability: shareholder(s) who become general partner(s) assume liability for obligations of the partnership</p> <p>Management: board of directors and officers should be eliminated; management is by general partners</p> <p>Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>
N o n p r o f i t C o r p o r a t i o n	<p>Purposes: engaging in any lawful business</p> <p>Ownership: members become shareholders or are taken out; shares are issued to shareholders</p> <p>Change in liability: none</p> <p>Management: must appoint or continue one or more directors and may appoint or continue officers</p> <p>Constituent operating documents: must adopt articles of incorporation and may continue or revise bylaws; if any</p>	N/A	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least two partners; memberships, if any, become partnership interests; members become partners if not taken out</p> <p>Change in liability: members who become partners assume liability for obligations of the partnership</p> <p>Management: board of directors and officers should be eliminated; management is by partners</p> <p>Constituent operating documents: articles of incorporation and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least one general and one limited partner; memberships, if any, become general or limited partnership interests; members, if any, become general or limited partners if not taken out</p> <p>Change in liability: members who become general partner(s) assume liability for obligations of the partnership; no change for members who become limited partners</p> <p>Management: board of directors and officers should be eliminated; management is by general partner(s)</p> <p>Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>
G e n e r a l P a r t n e r s h i p	<p>Purposes: engaging in any lawful business</p> <p>Ownership: partnership interests become shares; partners become shareholders or are taken out</p> <p>Change in liability: partners are relieved of liability for obligations of the corporation</p> <p>Management: must appoint one or more directors to replace general partners and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes</p> <p>Ownership: partnership interests become memberships or are eliminated; partners become members or are taken out and nonprofit corporation operates without members</p> <p>Change in liability: general partners relieved of liability</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	N/A	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least one general and one limited partner; general partnership interests become general or limited partnership interests; general partners become general or limited partners if not taken out</p> <p>Change in liability: general partners who become limited partners are relieved of liability for obligations of the partnership; no change for general partner(s) who remain general partner(s)</p> <p>Management: management is by general partner(s)</p> <p>Constituent operating documents: partnership agreement should be amended to provide for limited partners</p>

LLP	LLLP	LLC	Nonprofit Association
<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; shares become partnership interests; shareholders become partners if not taken out Change in liability: none Management: board of directors and officers should be eliminated; management is by partners Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; shares become general or limited partnership interests; shareholders become general or limited partners if not taken out Change in liability: none Management: board of directors and officers should be eliminated; management is by general partner(s) Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; shares become membership interests; shareholders become members if not taken out Change in liability: none Management: board of directors should be eliminated; management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement; officers may continue Constituent operating documents: articles and bylaws become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, nonprofit purposes Ownership: must eliminate shares; shareholders become members if not taken out Change in liability: members assume some liability for obligations of the association Management: directors and officers can continue Constituent operating documents: articles of incorporation and bylaws can continue as Constituent operating documents of nonprofit associations, but must be made consistent with nonprofit purposes</p>
<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; memberships, if any, become partnership interests; members become partners if not taken out Change in liability: none Management: board of directors and officers should be eliminated; management is by all partners Constituent operating documents: articles of incorporation and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; memberships, if any, become general or limited partnership interests; members, if any, become general or limited partners if not taken out Change in liability: none Management: board of directors and officers should be eliminated; management is by general partner(s) Constituent operating documents: articles and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; memberships, if any, become membership interests; members become members if not taken out Change in liability: none Management: board of directors should be eliminated; management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement; officers may continue Constituent operating documents: articles and bylaws become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, nonprofit purposes Ownership: members continue if nonprofit corp. had members unless taken out; otherwise, directors and officers become members Change in liability: members assume some obligations for liabilities of the nonprofit association Management: directors and officers can continue Constituent operating documents: articles of incorporation and bylaws can continue as constituent operating documents</p>
<p>N/A Should be accomplished by registration under CRS § 7-60-144 or CRS § 7-64-1001</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; general partnership interests become general or limited partnership interests; general partners become general or limited partners if not taken out Change in liability: general partners who become partners are relieved of liability for obligations of the partnership Management: management is by general partner(s) Constituent operating documents: partnership agreement should be amended to provide for limited partners and address change in liability</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; partnership interests become membership interests; partners become members if not taken out Change in liability: partners are relieved of liability for obligations of the LLC Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement Constituent operating documents: partnership agreement becomes, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, nonprofit purposes Ownership: partners become members if not taken out Change in liability: partners who become members are relieved of some liability for obligations of the nonprofit association Management: partners can continue to manage as members Constituent operating documents: partnership agreement becomes constituent operating document for nonprofit association but must be made consistent with nonprofit purposes</p>

APPENDIX I
continued

	Corporation	Nonprofit Corporation	General Partnership	Limited Partnership
L i m i t e d P a r t n e r s h i p	<p>Purposes: engaging in any lawful business</p> <p>Ownership: partnership interests become shares; partners become shareholders</p> <p>Change in liability: general partner(s) relieved of liability</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes</p> <p>Ownership: partnership interests become memberships or are eliminated; partners become members or are taken out and nonprofit corporation operates without members</p> <p>Change in liability: general partner(s) relieved of liability; limited partners: none.</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers.</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: limited and general partnership interests become general partnership interests; limited and general partners become general partners if not taken out</p> <p>Change in liability: limited partners who become general partner(s) assume liability for obligations of the partnership</p> <p>Management: management is by partners; general partners: none.</p> <p>Constituent operating documents: partnership agreement continues as amended</p>	N/A
L L P	<p>Purposes: engaging in any lawful business</p> <p>Ownership: partnership interests become shares; partners become shareholders</p> <p>Change in liability: general partner(s) relieved of liability</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes</p> <p>Ownership: partnership interests become memberships or are eliminated; partners become members or are taken out and nonprofit corporation operates without members</p> <p>Change in liability: none</p> <p>Management: must appoint one or more directors to replace partners and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: same</p> <p>Change in liability: limited partners who become general partner(s) assume liability for obligations of the partnership</p> <p>Management: management is by all partners</p> <p>Constituent operating documents: partnership agreement continues as amended</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: must have at least one general and one limited partner; partnership interests become general or limited partnership interests; partners become general or limited partners if not taken out</p> <p>Change in liability: partner(s) who become general partner(s) assume liability for obligations of the partnership; no change for partner(s) who become limited partner(s)</p> <p>Management: management is by general partner(s)</p> <p>Constituent operating documents: partnership agreement</p>
L L L P	<p>Purposes: engaging in any lawful business</p> <p>Ownership: partnership interests become shares; partners become shareholders</p> <p>Change in liability: general partner(s) are relieved of liability of obligations of the corporation</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes</p> <p>Ownership: partnership interests become memberships or are eliminated; partners become members or are taken out and nonprofit corporation operates without members</p> <p>Change in liability: none</p> <p>Management: must appoint one or more directors to replace general partner(s) and may appoint officers</p> <p>Constituent operating documents: must replace partnership agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: limited and general partners become partners if not taken out</p> <p>Change in liability: limited and general partners who become partner(s) assume liability for obligations of the partnership</p> <p>Management: management is by all partners</p> <p>Constituent operating documents: partnership agreement continues as amended</p>	<p>Purposes: to carry on a business for profit</p> <p>Ownership: no change</p> <p>Change in liability: general partner(s) who continue as general partners(s) become liable for obligations of the partnership; no change for partner(s) who become limited partners</p> <p>Management: no change</p> <p>Constituent operating documents: changes to partnership agreement may be appropriate to address change in liability</p>

LLP	LLLP	LLC	Nonprofit Association
<p>Purposes: to carry on a business for profit Ownership: limited and general partnership interests become partnership interests; general and limited partners become general partners if not taken out Change in liability: general partner(s) who become partners are relieved of liability for obligations of the partnership; limited partners who become partners: none Management: management is by partners Constituent operating documents: partnership agreement</p>	<p>N/A Should be accomplished by registration under CRS § 7-60-144 or CRS § 7-64-1001</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; general and limited partnership interests become membership interests; partners become members if not taken out; Change in liability: general partners are relieved of liability for obligations of the LLC; limited partners: none Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement Constituent operating documents: partnership agreements become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, non-profit purposes Ownership: partners become members if not taken out Change in liability: general partners who become members are relieved of some liability for obligations of the nonprofit association; limited partners who become members assume same liability for obligations of the nonprofit association Management: can continue or be altered by agreement Constituent operating documents: partnership agreement can continue as constituent operating document of the nonprofit association but must be made consistent with nonprofit purposes</p>
<p>N/A</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; partnership interests become general or limited partnership interests; partners become general or limited partners if not taken out Change in liability: none Management: management is by general partner(s) Constituent operating documents: partnership agreement should be amended to address limited partners</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; partnership interests become membership interests; partners become members if not taken out; Change in liability: none Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement Constituent operating documents: partnership agreements become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, non-profit purposes Ownership: partners become members if not taken out Change in liability: partners who become members assume some liability for obligations of the nonprofit association Management: partners can continue to manage as members Constituent operating documents: partnership agreement can continue as constituent operating document of the nonprofit association but must be made consistent with nonprofit purpose</p>
<p>Purposes: to carry on a business for profit Ownership: limited and general partnership interests become partnership interests; limited partners become general partners if not taken out Change in liability: none Management: management is by partners Constituent operating documents: partnership agreement</p>	<p>N/A</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; general and limited partnership interests become partnership interests; partners become members if not taken out; Change in liability: none Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement Constituent operating documents: partnership agreements become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, non-profit purposes Ownership: partners become members if not taken out Change in liability: partners who become members assume some liability for obligations of the nonprofit association Management: partners can continue to manage as members Constituent operating documents: partnership agreement can continue as constituent operating document of the nonprofit association but must be made consistent with nonprofit purposes</p>

APPENDIX I
continued

	Corporation	Nonprofit Corporation	General Partnership	Limited Partnership
L L C	<p>Purposes: engaging in any lawful business Ownership: membership interests become shares; members become shareholders; Change in liability: none Management: must appoint one or more directors to replace manager(s) or member-manager(s) and may appoint or continue officers Constituent operating documents: must replace operating agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes Ownership: members become members or are taken out and nonprofit corporation operates without members Change in liability: none Management: must appoint one or more directors to replace manager(s) or member-manager(s) and may appoint or continue officers Constituent operating documents: must replace operating agreement with articles of incorporation and bylaws, if any</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; membership interests become partnership interests; members become general partners if not taken out Change in liability: none Management: manager(s), if any, removed; management is by all partners Constituent operating documents: operating agreement becomes partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; membership interests become general and limited partnership interests; members become general or limited partners if not taken out Change in liability: members who become general partner(s) assume liability for obligations of the partnership; no change for members who become limited partners Management: manager(s), if any, removed; management is by general partner(s) Constituent operating documents: articles of organization and operating agreement become, or should be replaced by, a partnership agreement</p>
L P A	<p>Purposes: engaging in any lawful business Ownership: membership interests become shares; members become shareholders Change in liability: none Management: must appoint or continue one or more directors; may continue officers Constituent operating documents: must replace articles of association with articles of incorporation and must adopt or continue bylaws, if any</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes Ownership: members become members or are taken out and nonprofit corporation operates without members Change in liability: none Management: must appoint or continue one or more directors; may continue officers Constituent operating documents: must replace articles of association with articles of incorporation and must adopt or continue bylaws, if any</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; membership interests become partnership interests; members become general partners if not taken out Change in liability: members who become partner(s) assume liability for obligations of the partnership Management: managers and officers, if any, removed; management is by partners Constituent operating documents: articles of association and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; membership interests become general and limited partnership interests; members become general or limited partners if not taken out Change in liability: members who become general partner(s) assume liability for obligations of the partnership; no change for members who become limited partners Management: manager(s) and officers, if any, removed; management is by general partner(s) Constituent operating documents: articles of association and bylaws become, or should be replaced by, partnership agreement</p>
N o n p r o f i t A s s o c i a t i o n	<p>Purposes: engaging in any lawful business Ownership: members become shareholders; shares issued to shareholders Change in liability: members are relieved of certain liabilities for obligations of the corporation Management: must appoint or continue one or more directors and may appoint or continue officers Constituent operating documents: must adopt articles of incorporation and may adopt bylaws</p>	<p>Purposes: engaging in any lawful business or activity; should have nonprofit purposes Ownership: members can remain members or are taken out and nonprofit corporation operates without members Change in liability: members relieved of certain liabilities Management: must appoint or continue one or more directors and may appoint or continue officers Constituent operating documents: must adopt articles of incorporation and bylaws, if any</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; memberships become partnership interests; members become partners if not taken out Change in liability: members who become partner(s) assume liability for obligations of the partnership Management: management is by all partners Constituent operating documents: should enter into partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; memberships become general or limited partnership interests; members become general or limited partners if not taken out; Change in liability: members who become general partner(s) assume liability for obligations of the partnership; members who become limited partners are relieved of some liability Management: management is by general partner(s) Constituent operating documents: certificate of limited partnership and partnership agreement needed</p>

LLP	LLL	LLC	Nonprofit Association
<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; members become general partners if not taken out Change in liability: members who become partner(s) assume liability for obligations of the partnership Management: manager(s), if any, removed; management is by partners Constituent operating documents: articles of organization and operating agreement become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; members become general or limited partners if not taken out; Change in liability: none Management: manager(s), if any, removed; management is by general partner(s) Constituent operating documents: articles of organization and operating agreement become, or should be replaced by, a partnership agreement</p>	N/A	<p>Purposes: common, lawful, non-profit purposes Ownership: members remain as members if not taken out Change in liability: members who become owners assume some liability for obligations of the nonprofit association Management: members can continue to manage Constituent operating documents: articles of incorporation no longer effective; operating agreement can become constituent operating agreement of nonprofit association but must be made consistent with nonprofit purposes</p>
<p>Purposes: to carry on a business for profit Ownership: membership interests become partnership interests; members become general partners if not taken out Change in liability: none Management: managers and officers removed; management is by partners Constituent operating documents: articles of association and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; membership interests become general and limited partnership interests; members become general or limited partners if not taken out; Change in liability: none Management: manager(s) and officers, if any, removed; management is by general partner(s) Constituent operating documents: articles of association and bylaws become, or should be replaced by, partnership agreement</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; membership interests become membership interests; members become members if not taken out; Change in liability: none Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement; officers may continue Constituent operating documents: articles of association and bylaws become, or should be replaced by, operating agreement</p>	<p>Purposes: common, lawful, non-profit purposes Ownership: members remain as members if not taken out Change in liability: members who become owners assume some liability for obligations of the nonprofit association Management: members can continue to manage Constituent operating documents: articles of incorporation no longer effective; bylaws can become constituent operating document of the nonprofit association but must be made consistent with nonprofit purposes</p>
<p>Purposes: to carry on a business for profit Ownership: must have at least two partners; memberships become partnership interests; members become partners if not taken out Change in liability: members who become partners are relieved of some liability for obligations of the partnership Management: management is by partners Constituent operating documents: statement of registration and partnership agreement needed</p>	<p>Purposes: to carry on a business for profit Ownership: must have at least one general and one limited partner; memberships become general or limited partnership interests; members become general or limited partners if not taken out; Change in liability: members who become general partner(s) assume liability for obligations of the partnership; members who become limited partners are relieved of some liability Management: management is by general partner(s) Constituent operating documents: certificate of limited partnership, registration statement and partnership agreement needed</p>	<p>Purposes: any lawful activity Ownership: must have at least one member; memberships become membership interests; members become members if not taken out; Change in liability: members are relieved of some liability for obligations of the LLC Management: management is by one or more managers or by members as specified in articles of organization and as appointed per the operating agreement Constituent operating documents: articles of organization and operating agreement needed</p>	N/A

APPENDIX II:
Domestic Entity Conversions—Filing Requirements
(Top: Resulting Entity; Side: Converting Entity)

	Corporation	Nonprofit Corporation	General Partnership	Limited Partnership
Corporation	N/A	Must file statement of conversion and articles of incorporation	Must file statement of conversion	Must file statement of conversion and certificate of limited partnership
Nonprofit corporation	Must file statement of conversion and articles of incorporation; Attorney General may have interest in conversion	N/A	Must file statement of conversion; Attorney General may have interest in conversion	Must file statement of conversion and certificate of limited partnership; Attorney General may have interest in conversion
General partnership	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	N/A	Must file statement of conversion and certificate of limited partnership
Limited partnership	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Must file statement of conversion	N/A
1831 limited partnership	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Must file statement of conversion	Must file statement of conversion and certificate of limited partnership; can also be accomplished by electing to have LP Act govern per CRS § 7-62-1103 and filing certificate of limited partnership per CRS § 7-62-201
LLP	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Should be accomplished by filing statement of withdrawal of registration for a limited liability partnership per CRS § 7-60-144(4.5) or CRS § 7-64-1001(5)	Must file statement of conversion and certificate of limited partnership
LLLP	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Must file statement of conversion	Should be accomplished by filing statement of withdrawal of registration for a limited liability limited partnership per CRS § 7-60-144(4.5) or CRS § 7-64-1001(5)
LLC	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Must file statement of conversion	Must file statement of conversion and certificate of limited partnership
LPA	Must file statement of conversion and articles of incorporation	Must file statement of conversion and articles of incorporation	Must file statement of conversion	Must file statement of conversion and certificate of limited partnership
Nonprofit association	Must file statement of conversion and articles of incorporation; Attorney General may have interest in conversion	Must file statement of conversion and articles of incorporation; Attorney General may have interest in conversion	No filing required; Attorney General may have interest in conversion	Must file statement of conversion and certificate of limited partnership; Attorney General may have interest in conversion

LLP	LLL	LLC	Nonprofit Association
Must file statement of conversion and statement of registration	Must file statement of conversion, certificate of limited partnership and statement of registration	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration; Attorney General may have interest in conversion	Must file statement of conversion, certificate of limited partnership and statement of registration; Attorney General may have interest in conversion	Must file statement of conversion and articles of organization; Attorney General may have interest in conversion if nonprofit purposes change	Must file statement of conversion; A dissolved nonprofit corporation is treated as a nonprofit association for some purposes per CRS § 7-30-101.1
Should be accomplished by registration under CRS § 7-60-144 or CRS § 7-64-1001	Must file statement of conversion, certificate of limited partnership and statement of registration	Must file statement of conversion and articles of organization	No filing required; must have nonprofit purposes
Must file statement of conversion and statement of registration	Should be accomplished by registration under CRS § 7-60-144 or CRS § 7-64-1001	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration	Should be accomplished by registration under CRS § 7-60-144 or CRS § 7-64-1001	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
N/A	Must file statement of conversion, certificate of limited partnership and statement of registration	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration	N/A	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration	Must file statement of conversion, certificate of limited partnership and statement of registration	N/A	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration	Must file statement of conversion, certificate of limited partnership and statement of registration	Must file statement of conversion and articles of organization	Must file statement of conversion; must have nonprofit purposes
Must file statement of conversion and statement of registration; Attorney General may have interest in conversion	Must file statement of conversion, certificate of limited partnership and statement of registration; Attorney General may have interest in conversion	Must file statement of conversion and articles of organization; Attorney General may have interest in conversion unless LLC has nonprofit purposes	N/A

APPENDIX III:
Entity Conversions—Tax Treatment
(Top: Resulting Entity; Side: Converting Entity)

	Corporations and Entities Taxable as Corporations	Corporations and Entities Taxable as S Corporations	Entities Taxable as Partnerships	Tax-exempt Entities under 501(c)(3) of the IRC (treated under the “check-the-box” regulations as corporations regardless of state law form)	Disregarded Entities under the “check-the-box” regulations
Corporations and Entities Taxable as Corporations	N/A	Accomplished not by conversion but by tax election. Conversion of existing C Corporation raises special issues, e.g., built-in gains tax of IRC § 1374	Generally treated as a taxable transaction at both corporate and shareholder level	Generally treated as a taxable transaction under IRC § 337(d)	Generally treated as a taxable transaction at both corporate and shareholder level
Corporations and Entities Taxable as S Corporations	Generally no effect, but corporate-level tax thereafter	N/A	Generally treated as a taxable transaction at both corporate and shareholder level, but corporate gain passes through to shareholder and shareholder basis offset for recognized corporate-level gain	Generally treated as a taxable transaction under IRC § 337(d)	Generally treated as a taxable transaction at both corporate and shareholder level, but corporate gain passes through to shareholder and shareholder basis offset for recognized corporate-level gain
Entities Taxable as Partnerships	Generally treated as a tax-free incorporation under § 351 of the IRC, unless special rules apply (e.g., IRC § 357(c) gain)	Generally treated as a tax-free incorporation under § 351 of the IRC, unless special rules apply (e.g., IRC § 357(c) gain). An S Corp election is treated as an election to be taxed as a corporation under the “check-the-box” regulations	Generally, resulting entity is the same tax partnership and the conversion is treated as tax-free unless there is a shift in liabilities under IRC § 752	Need to apply for tax-exempt status. Entity deemed to be treated as corporation under “check-the-box” regulations	Generally treated as a tax free liquidation of the partnership to the continuing owner and a taxable sale of the partnership interests by the outgoing partners. Rev. Rul. 99-6
Tax-exempt Entities under 501(c)(3) of the IRC	Value of property devoted to charitable purposes must be preserved; otherwise private inurement and other tax issues	Value of property devoted to charitable purposes must be preserved; otherwise private inurement and other tax issues	Value of property devoted to charitable purposes must be preserved; otherwise private inurement and other tax issues	IRS says entity must re-apply for tax-exempt status if change in form of organization	Value of property devoted to charitable purposes must be preserved; otherwise private inurement and other tax issues
Disregarded Entities	Generally treated as tax-free incorporation under IRC § 351 unless special rules apply (e.g., IRC § 357(c) gain)	Generally treated as a tax-free incorporation under 351 of the IRC, unless special rules apply (e.g., IRC § 357(c) gain). An S Corp election is treated as an election to be taxed as a corporation under the “check-the-box” regulations	Generally treated as tax-free partnership formation under IRC § 721, Rev. Rul. 99-5. May be gain or loss to prior owner if sale or deemed sale of a portion of the underlying property	Need to apply for tax-exempt status. Entity deemed to be treated as corporation under “check-the-box” regulations	N/A

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