

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1127

Introduced by

Representatives Laning, B. Anderson, Tveit

Senator Anderson

1 A BILL for an Act to amend and reenact sections 10-15-08.1, 10-19.1-13, and 10-32.1-11,  
2 subsection 14 of section 10-32.1-92, section 10-33-10, subdivision I of subsection 1 of section  
3 10-33-140, subsection 3 of section 10-34-04, subdivision I of subsection 1 of section 10-36-08,  
4 section 45-10.2-10, subsection 13 of section 45-10.2-109, sections 45-11-01, 45-13-04.1,  
5 45-22-04, and 45-23-03, subsection 13 of section 45-23-08, and section 47-25-03 of the North  
6 Dakota Century Code, relating to the names of cooperatives, corporations, limited liability  
7 companies, domestic and foreign real estate investment trusts, limited partnerships, fictitious  
8 partnerships, and limited liability partnerships; and to provide a contingent effective date.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Section 10-15-08.1 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **10-15-08.1. Cooperative name.**

13 1. The cooperative name:

- 14 a. Must be expressed in letters or characters used in the English language as those  
15 letters or characters appear in the American standard code for information  
16 interchange (ASCII) table.
- 17 b. May contain the word "corporation" or "incorporated" or an abbreviation of either  
18 of those words.
- 19 c. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying  
20 it is organized for a purpose other than one or more business purposes for which  
21 a cooperative association may be organized under this chapter.
- 22 d. ~~May not be the same as, or deceptively similar to,~~Must be distinguishable in the  
23 records of the secretary of state from the name, whether foreign and authorized  
24 to do business in this state, or domestic, unless there is filed with the articles of

- 1 association of a domestic cooperative or the application for authority of a foreign  
2 cooperative, a record in compliance with subsection 2 of:
- 3 (1) Another cooperative association;  
4 (2) A corporation;  
5 (3) A limited liability company;  
6 (4) A limited liability partnership;  
7 (5) A limited partnership;  
8 (6) A limited liability limited partnership;  
9 (7) A name the right to which is, at the time of organization, in some manner  
10 reserved;  
11 (8) A fictitious name registered with the secretary of state as provided in  
12 chapter 45-11;  
13 (9) A trade name registered with the secretary of state as provided in chapter  
14 47-25; or  
15 (10) A trademark or service mark registered in the manner provided in chapter  
16 47-22.
- 17 2. If the secretary of state determines a cooperative name is ~~deceptively similar~~  
18 ~~to~~indistinguishable from another name for purposes of this chapter, then the  
19 cooperative name may not be used unless there is filed with the articles of association  
20 or application for authority:
- 21 a. A written consent to use the name obtained from the domestic or foreign  
22 corporation, limited liability company, limited liability partnership, limited liability  
23 limited partnership, or limited partnership authorized to do business in this state  
24 having a ~~deceptively similar~~an indistinguishable name, or the holder of a  
25 reserved name, registered trade name, fictitious name, or trademark or service  
26 mark; or  
27 b. A certified copy of a judgment of a court in this state establishing the prior right of  
28 the applicant to the use of the name in this state.
- 29 3. The secretary of state shall determine whether a cooperative name is ~~deceptively~~  
30 ~~similar to~~indistinguishable in the secretary of state's records from another name for

1           purposes of this chapter and may adopt rules reasonable or necessary for making  
2           these determinations.

3           4. This section and section 10-15-08.2 do not:

4           a. Abrogate or limit:

5                 (1) The law of unfair competition or unfair practices;

6                 (2) Chapter 47-25;

7                 (3) The laws of the United States with respect to the right to acquire and protect  
8                         copyrights, trade names, trademarks, service names, and service marks; or

9                 (4) Any other rights to the exclusive use of names or symbols; or

10           b. Derogate the common law or the principles of equity.

11           5. A cooperative that is involuntarily dissolved by the secretary of state under section  
12           10-15-53.2 may reacquire the right to use that name by reinstating the cooperative  
13           within the time provided in section 10-15-53.3 or by refiling articles of association,  
14           unless the name has been adopted for use or reserved by another person, in which  
15           case the filing must be rejected unless the filing is accompanied by a written consent  
16           or judgment as provided in ~~subdivision d~~ of subsection 4~~2~~. A cooperative that is unable  
17           to reacquire the use of its name shall adopt a new name that complies with this  
18           section.

19           6. A cooperative that files its articles of association with an effective date later than the  
20           date of filing as provided in section 10-15-07 shall maintain the right to the name until  
21           the effective date.

22           **SECTION 2. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is  
23           amended and reenacted as follows:

24           **10-19.1-13. Corporate name.**

25           1. The corporate name:

26                 a. Must be expressed in letters or characters used in the English language as those  
27                         letters or characters appear in the American standard code for information  
28                         interchange (ASCII) table.

29                 b. Must contain the word "company", "corporation", "incorporated", "limited", or an  
30                         abbreviation of one or more of these words.

- 1           c. May not contain the words "limited liability company", "limited partnership",  
2           "limited liability partnership", "limited liability limited partnership", or any  
3           abbreviation of these words.
- 4           d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies~~implying the  
5           corporation:
- 6           (1) Is incorporated for a purpose other than:
- 7                 (a) A lawful business purpose for which a corporation may be  
8                 incorporated under this chapter; or
- 9                 (b) For a purpose stated in its articles of incorporation; or
- 10           (2) May not be incorporated under this chapter.
- 11           e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the  
12           records of the secretary of state from:
- 13           (1) The name, whether foreign and authorized to do business in this state or  
14           domestic, unless there is filed with the articles a record that complies with  
15           subsection 3, of:
- 16                 (a) Another corporation;
- 17                 (b) A corporation incorporated or authorized to do business in this state  
18                 under another chapter of this code;
- 19                 (c) A limited liability company;
- 20                 (d) A limited partnership;
- 21                 (e) A limited liability partnership; or
- 22                 (f) A limited liability limited partnership;
- 23           (2) A name the right to which is, at the time of incorporation, reserved in the  
24           manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,  
25           45-13-04.2, or 45-22-05;
- 26           (3) A fictitious name registered in the manner provided in chapter 45-11;
- 27           (4) A trade name registered in the manner provided in chapter 47-25; or
- 28           (5) A trademark or service mark registered in the manner provided in chapter  
29           47-22.
- 30           2. The secretary of state shall determine whether a corporate name is "~~deceptively-~~  
31           ~~similar" to~~distinguishable in the secretary of state's records from another name for

1 purposes of this chapter and may adopt rules reasonable or necessary for making  
2 these determinations.

3 3. If the secretary of state determines ~~that a corporate name is "deceptively similar"~~  
4 ~~to~~indistinguishable in the secretary of state's records from another name for purposes  
5 of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the  
6 articles:

7 a. The written consent of the holder of the rights to the name to which the proposed  
8 name has been determined to be ~~deceptively similar~~indistinguishable; or

9 b. A certified copy of a judgment of a court in this state establishing the prior right of  
10 the applicant to the use of the name in this state.

11 4. This ~~subsection~~section does not affect the right of a domestic corporation existing on  
12 July 1, 1986, or a foreign corporation authorized to do business in this state on that  
13 date to continue the use of its name.

14 5. This section and section 10-19.1-14 do not:

15 a. Abrogate or limit:

16 (1) The law of unfair competition or unfair practices;

17 (2) Chapter 47-25;

18 (3) The laws of the United States with respect to the right to acquire and protect  
19 copyrights, trade names, trademarks, service names, and service marks; or

20 (4) Any other rights to the exclusive use of names or symbols; or

21 b. Derogate the common law or the principles of equity.

22 6. A domestic or foreign corporation that is the surviving organization in a merger with  
23 one or more other organizations, or that acquires by sale, lease, or other disposition to  
24 or exchange with an organization all or substantially all of the assets of another  
25 organization including its name, may have the same name, subject to the  
26 requirements of subsection 1, as that used in this state by any of the other  
27 organizations, if the other organization whose name is sought to be used:

28 a. Was incorporated, organized, formed, or registered under the laws of this state;

29 b. Is authorized to transact business or conduct activities in this state;

30 c. Holds a reserved name in the manner provided in section 10-19.1-14,

31 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- 1           d. Holds a fictitious name registered in the manner provided in chapter 45-11;
- 2           e. Holds a trade name registered in the manner provided in chapter 47-25; or
- 3           f. Holds a trademark or service mark registered in the manner provided in chapter
- 4                 47-22.
- 5         7. The use of a name by a corporation in violation of this section does not affect or vitiate
- 6           its corporate existence. However, a court in this state may, upon application of the
- 7           state or of an interested or affected person, enjoin the corporation from doing business
- 8           under a name assumed in violation of this section, although its articles may have been
- 9           filed with the secretary of state and a certificate of incorporation issued.
- 10        8. A corporation whose period of existence has expired or ~~that~~ is involuntarily dissolved
- 11           by the secretary of state pursuant to section 10-19.1-146 or 10-19.1-146.1 may
- 12           reacquire the right to use that name by refiling articles of incorporation pursuant to
- 13           section 10-19.1-11, unless the name has been adopted for use or reserved by another
- 14           person, in which case the filing will be rejected unless the filing is accompanied by a
- 15           written consent or judgment as provided in subsection ~~23~~. A corporation that cannot
- 16           reacquire the use of its corporate name shall adopt a new corporate name that
- 17           complies with the provisions of this section:
- 18           a. By refiling articles of incorporation pursuant to section 10-19.1-11;
- 19           b. By amending pursuant to section 10-19.1-17; or
- 20           c. By reinstating pursuant to section 10-19.1-146.
- 21        9. Subject to section 10-19.1-133, this section applies to ~~any~~ foreign corporation
- 22           transacting business in this state, having a certificate of authority to transact business
- 23           in this state, or applying for a certificate of authority.
- 24        10. An amendment that only changes the name of the corporation may be authorized by a
- 25           resolution approved by the board and may, ~~but need not,~~ be submitted to and
- 26           approved by the shareholders as provided in section 10-19.1-18.
- 27        11. A corporation that files its articles of incorporation with an effective date later than the
- 28           date of filing as provided in section 10-19.1-12 shall maintain the right to the name
- 29           until the effective date.

30         **SECTION 3. AMENDMENT.** Section 10-32.1-11 of the North Dakota Century Code is

31         amended and reenacted as follows:

1       **10-32.1-11. Limited liability company name.**

2       1. The limited liability company name:

3           a. Must be expressed in letters or characters used in the English language as those  
4           letters or characters appear in the American standard code for information  
5           interchange table;

6           b. Must contain the words "limited liability company", or must contain the  
7           abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may  
8           be used interchangeably for all purposes authorized by this chapter, including  
9           real estate matters, contracts, and filings with the secretary of state;

10          c. May not contain:

11           (1) The word "corporation", "incorporated", "limited partnership", "limited liability  
12           partnership", "limited liability limited partnership", or anyan abbreviation of  
13           these words; or

14           (2) The words "limited" or "company" without association to the words "limited  
15           liability company" or the abbreviations of these words as provided in  
16           subsection b;

17          d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying  
18          the limited liability company:

19           (1) Is organized for a purpose other than:

20           (a) A lawful business purpose for which a limited liability company may be  
21           organized under this chapter; or

22           (b) For a purpose stated in its articles of organization; or

23           (2) May not be organized under this chapter; and

24          e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the  
25          records of the secretary of state from:

26           (1) The name, whether foreign and authorized to do business in this state or  
27           domestic, unless there is filed with the articles a record which complies with  
28           subsection 3, of:

29           (a) Another limited liability company;

30           (b) A corporation;

31           (c) A limited partnership;

- 1 (d) A limited liability partnership; or  
2 (e) A limited liability limited partnership;  
3 (2) A name, the right of which is, at the time of organization, reserved in the  
4 manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,  
5 45-13-04.2, or 45-22-05;  
6 (3) A fictitious name registered in the manner provided in chapter 45-11;  
7 (4) A trade name registered in the manner provided in chapter 47-25; or  
8 (5) A trademark or service mark registered in the manner provided in chapter  
9 47-22.
- 10 2. The secretary of state shall determine whether a limited liability company name is  
11 ~~deceptively similar to~~distinguishable in the secretary of state's records from another  
12 name for purposes of this chapter and may adopt rules reasonable or necessary for  
13 making these determinations.
- 14 3. If the secretary of state determines ~~that~~ a limited liability company name is ~~deceptively-~~  
15 ~~similar to~~indistinguishable in the secretary of state's records from another name for  
16 purposes of this chapter, ~~then~~ the limited liability company name may not be used  
17 unless there is filed with the articles:
- 18 a. The written consent of the holder of the rights to the name to which the proposed  
19 name has been determined to be ~~deceptively similar~~indistinguishable; or  
20 b. A certified copy of a judgment of a court in this state establishing the prior right of  
21 the applicant to the use of the name in this state.
- 22 4. This section and section 10-32.1-12 do not:
- 23 a. Abrogate or limit:
- 24 (1) The law of unfair competition or unfair practices;  
25 (2) Chapter 47-25;  
26 (3) The laws of the United States with respect to the right to acquire and protect  
27 copyrights, trade names, trademarks, service names, and service marks; or  
28 (4) Any other rights to the exclusive use of names or symbols.
- 29 b. Derogate the common law or the principles of equity.
- 30 5. A domestic or foreign limited liability company that is the surviving organization in a  
31 merger with one or more other organizations, or that acquires by sale, lease, or other



- 1 disposition to or exchange with an organization all or substantially all of the assets of  
2 another organization including its name, may have the same name, subject to the  
3 requirements of subsection 1, as that used in this state by any of the other  
4 organizations, if the organization whose name is sought to be used:
- 5 a. Was organized, incorporated, formed, or registered under the laws of this state;
  - 6 b. Is authorized to transact business or conduct activities in this state;
  - 7 c. Holds a reserved name in the manner provided in section 10-19.1-14,  
8 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - 9 d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - 10 e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - 11 f. Holds a trademark or service mark registered in the manner provided in  
12 chapter 47-22.
- 13 6. The use of a name by a limited liability company in violation of this section does not  
14 affect or vitiate its limited liability company existence. However, a court in this state  
15 may, upon application of the state or of an interested or affected person, enjoin the  
16 limited liability company from doing business under a name assumed in violation of  
17 this section, although its articles of organization may have been filed with the secretary  
18 of state and a certificate of organization issued.
- 19 7. A limited liability company whose period of existence has expired or that is  
20 involuntarily terminated by the secretary of state pursuant to section ~~10-32.1-~~  
21 ~~89~~10-32.1-90 may reacquire the right to use that name by refiling articles of  
22 organization pursuant to section 10-32.1-20, unless the name has been adopted for  
23 use or reserved by another person, in which case the filing will be rejected unless the  
24 filing is accompanied by a written consent or judgment pursuant to subsection ~~23~~. A  
25 limited liability company that cannot reacquire the use of its limited liability company  
26 name shall adopt a new limited liability company name which complies with the  
27 provisions of this section:
- 28 a. By refiling the articles of organization pursuant to section 10-32.1-20;
  - 29 b. By amending pursuant to section 10-32.1-21; or
  - 30 c. By reinstating pursuant to section 10-32.1-91.

1       8.    Subject to section 10-32.1-73, this section applies to anya foreign limited liability  
2       company transacting business in this state, having a certificate of authority to transact  
3       business in this state, or applying for a certificate of authority.

4       9.    An amendment that only changes the name of the limited liability company may be  
5       authorized by a resolution approved by the board and ~~may, but need not,~~ be submitted  
6       to and approved by the members as provided in subdivision b of subsection 1 of  
7       section 10-32.1-21.

8       10.   A limited liability company that files its articles of organization with an effective date  
9       later than the date of filing as provided in subdivision b of subsection 2 of section  
10      10-32.1-20 shall maintain the right to the name until the effective date.

11      **SECTION 4. AMENDMENT.** Subsection 14 of section 10-32.1-92 of the North Dakota  
12      Century Code is amended and reenacted as follows:

13      14.    Filing a consent to use ofa name, ten dollars.

14      **SECTION 5. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is  
15      amended and reenacted as follows:

16      **10-33-10. Corporate name.**

17      1.    The corporate name:

18           a.    Must be in letters or characters used in the English language as those letters or  
19           characters appear in the American standard code for information interchange  
20           (ASCII) table.

21           b.    Need not contain the word "company", "corporation", "incorporated", "limited", or  
22           an abbreviation of one or more of these words.

23           c.    May not contain the words "limited liability company", "limited partnership",  
24           "limited liability partnership", "limited liability limited partnership", or anyan  
25           abbreviation of these words.

26           d.    May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying  
27           the corporation:

28           (1)    Is incorporated for a purpose other than:

29                   (a)    A lawful nonprofit purpose for which a corporation may be  
30                   incorporated under this chapter; or

31                   (b)    For a purpose stated in its articles; or

- 1                   (2) May not be incorporated under this chapter.
- 2           e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the
- 3                   records of the secretary of state from:
- 4                   (1) The name, whether foreign and authorized to conduct activities in this state
- 5                               or domestic unless there is filed with the articles a record that complies with
- 6                               subsection 23, of:
- 7                               (a) Another corporation;
- 8                               (b) A corporation incorporated or authorized to do business in this state
- 9                                       under another provision of this code;
- 10                              (c) A limited liability company;
- 11                              (d) A limited partnership;
- 12                              (e) A limited liability partnership; or
- 13                              (f) A limited liability limited partnership;
- 14                   (2) A name the right to which is, at the time of incorporation, reserved in the
- 15                               manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,
- 16                               45-13-04.2, or 45-22-05;
- 17                   (3) A fictitious name registered in the manner provided in chapter 45-11;
- 18                   (4) A trade name registered in the manner provided in chapter 47-25; or
- 19                   (5) A trademark or service mark registered in the manner provided in chapter
- 20                               47-22.
- 21           2. The secretary of state shall determine whether a corporate name is "~~deceptively-~~
- 22                   ~~similar~~" to distinguishable in the secretary of state's records from another name for
- 23                   purposes of this chapter and may adopt rules reasonable or necessary for making
- 24                   these determinations.
- 25           3. If the secretary of state determines that a corporate name is "~~deceptively similar-~~
- 26                   ~~to~~indistinguishable in the secretary of state's records from another name for purposes
- 27                   of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the
- 28                   articles:
- 29                   a. The written consent of the holder of the rights to the name the proposed name is
- 30                               determined to be ~~deceptively similar to~~indistinguishable; or

- 1           b. A certified copy of a judgment of a court in this state establishing the prior right of  
2           the applicant to the use of the name in this state.
- 3       4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a  
4       foreign corporation authorized to do business in this state on that date to continue the  
5       use of its name.
- 6       5. This section and section 10-33-11 do not:
- 7       a. Abrogate or limit:
- 8           (1) The law of unfair competition or unfair practices;
- 9           (2) Chapter 47-25;
- 10          (3) The laws of the United States with respect to the right to acquire and protect  
11          copyrights, trade names, trademarks, service names, or service marks; or  
12          (4) Any other rights to the exclusive use of names or symbols; or
- 13       b. Derogate the common law or the principles of equity.
- 14       6. A domestic or foreign corporation that is the surviving organization in a merger with  
15       one or more other organizations, or that acquires by sale, lease, or other disposition to  
16       or exchange with an organization all or substantially all of the assets of another  
17       organization including its name, may have the same name, subject to the  
18       requirements of subsection 1, as that used in this state by any of the other  
19       organizations, if the other organization whose name is sought to be used:
- 20       a. Was incorporated, organized, formed, or registered under the laws of this state;
- 21       b. Is authorized to conduct activities or transact business in this state;
- 22       c. Holds a reserved name in the manner provided in section 10-19.1-14,  
23       10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
- 24       d. Holds a fictitious name registered in the manner provided in chapter 45-11;
- 25       e. Holds a trade name registered in the manner provided in chapter 47-25; or
- 26       f. Holds a trademark or service mark registered in the manner provided in chapter  
27       47-22.
- 28       7. The use of a name by a corporation in violation of this section does not affect or vitiate  
29       its corporate existence, but a court in this state may, upon application of the state or of  
30       an interested or affected person, enjoin the corporation from conducting activities

1 under a name assumed in violation of this section, although its articles may have been  
2 filed with the secretary of state and a certificate of incorporation issued.

3 8. A corporation whose period of existence has expired or that is involuntarily dissolved  
4 by the secretary of state pursuant to section 10-33-139 may reacquire the right to use  
5 that name by refiling articles of incorporation pursuant to section 10-33-08 unless the  
6 name has been adopted for use or reserved by another person, in which case the  
7 filing will be rejected unless the filing is accompanied by a written consent or judgment  
8 pursuant to subsection 23. A corporation that cannot reacquire the use of its corporate  
9 name must adopt a new corporate name that complies with the provisions of this  
10 section:

- 11 a. By refiling articles of incorporation pursuant to section 10-33-08;
- 12 b. By amending pursuant to section 10-33-14; or
- 13 c. By reinstating pursuant to section 10-33-139.

14 9. Subject to section 10-33-126, this section applies to ~~any~~ foreign corporation  
15 transacting business in this state, having a certificate of authority to transact business  
16 in this state, or applying for a certificate of authority.

17 10. An amendment that only changes the name of the corporation may be authorized by a  
18 resolution approved by the board and ~~may, but need not,~~ be submitted to and  
19 approved by the members as provided in section 10-33-15.

20 11. A corporation that files its articles of incorporation with an effective date later than the  
21 date of filing as provided in section 10-33-09 shall maintain the right to the name until  
22 the effective date.

23 **SECTION 6. AMENDMENT.** Subdivision I of subsection 1 of section 10-33-140 of the North  
24 Dakota Century Code is amended and reenacted as follows:

- 25 I. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

26 **SECTION 7. AMENDMENT.** Subsection 3 of section 10-34-04 of the North Dakota Century  
27 Code is amended and reenacted as follows:

28 3. A domestic or foreign real estate investment trust shall register with the secretary of  
29 state by submitting an application signed by a trustee which includes:

- 30 a. The name of the real estate investment trust which ~~may not be the same or~~  
31 deceptively similar to must be distinguishable in the records of the secretary of

1           ~~state from~~ the name of ~~any other~~another real estate investment trust registered  
2           with the secretary of state, or ~~anya~~ corporation, limited liability company, limited  
3           partnership, limited liability partnership, limited liability limited partnership, or  
4           ~~anya~~ name that is in some manner reserved with the secretary of state, ~~that is a~~  
5           fictitious trade name registered as provided in chapter 45-11, ~~or that is a trade~~  
6           name registered as provided in chapter 47-25, or is a trademark or service mark  
7           registered as provided in chapter 47-22, unless there is filed with the secretary of  
8           state a written consent of the holder of the ~~similar~~indistinguishable trade name to  
9           use the name proposed by the real estate investment trust is filed with the  
10          secretary of state. The name may not contain the word "corporation", "company",  
11          "incorporated", "limited liability company", or ~~anyan~~ abbreviation of these words.  
12          The secretary of state shall determine whether a name is distinguishable in the  
13          secretary of state's records and may adopt rules reasonable or necessary for  
14          making these determinations.

- 15          b. The state and date of its formation.
- 16          c. The name, address, and principal place of business of each trustee and officer.
- 17          d. The name of its registered agent as provided in chapter 10-01.1 and, if a  
18          noncommercial registered agent, then the address of that noncommercial  
19          registered agent in this state.
- 20          e. The address of the principal place of business.
- 21          f. A statement that the secretary of state is appointed the agent of the real estate  
22          investment trust for service of process as provided in section 10-01.1-13.

23          **SECTION 8. AMENDMENT.** Subdivision l of subsection 1 of section 10-36-08 of the North  
24          Dakota Century Code is amended and reenacted as follows:

- 25                  l. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

26          **SECTION 9. AMENDMENT.** Section 45-10.2-10 of the North Dakota Century Code is  
27          amended and reenacted as follows:

28          **45-10.2-10. Limited partnership name.**

- 29                  1. The name of each limited partnership as set forth in the certificate of limited  
30          partnership:

- 1           a. Must be expressed in letters or characters used in the English language as those  
2           letters or characters appear in the American standard code for information  
3           interchange (ASCII) table.
- 4           b. Must contain without abbreviation the words "limited partnership" or the  
5           abbreviation "L.P." or "LP", either of which abbreviations may be used  
6           interchangeably for all purposes authorized by this chapter, including real estate  
7           matters, contracts, and filings with the secretary of state.
- 8           c. May contain the name of anya partner.
- 9           d. May not contain the word "corporation", "company", "incorporated", "limited  
10          liability company", "limited liability partnership", "limited liability limited  
11          partnership", or anyan abbreviation of these words.
- 12          e. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying  
13          the limited partnership:
- 14           (1) Is organized for a purpose other than:
- 15               (a) A lawful purpose for which a limited partnership may be organized  
16               under this chapter; or
- 17               (b) For a purpose stated in its certificate of limited partnership; or
- 18           (2) May not be organized under this chapter.
- 19          f. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the  
20          records of the secretary of state from:
- 21           (1) The name, whether foreign and authorized to do business in this state or  
22           domestic, unless there is filed with the certificate of limited partnership a  
23           record in compliance with subsection 3, of:
- 24               (a) Another limited partnership;
- 25               (b) A corporation;
- 26               (c) A limited liability company;
- 27               (d) A limited liability partnership; or
- 28               (e) A limited liability limited partnership;
- 29           (2) A name the right to which is, at the time of the filing of the certificate of  
30           limited partnership, reserved in the manner provided in section 10-19.1-14,  
31           10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- 1                   (3) A fictitious name registered in the manner provided in chapter 45-11;
- 2                   (4) A trade name registered in the manner provided in chapter 47-25; or
- 3                   (5) A trademark or service mark registered in the manner provided in chapter
- 4                   47-22.
- 5           2. The secretary of state shall determine whether a limited partnership name is
- 6           ~~deceptively similar to~~distinguishable in the secretary of state's records from another
- 7           name for purposes of this chapter and may adopt rules reasonable or necessary for
- 8           making these determinations.
- 9           3. If the secretary of state determines a limited partnership name is ~~deceptively similar~~
- 10           ~~to~~indistinguishable in the secretary of state's records from another name for purposes
- 11           of this chapter, ~~then~~ the limited partnership name may not be used unless there is filed
- 12           with the articles:
- 13           a. The written consent of the holder of the registered trade name or the holder of
- 14           the rights to the name to which the proposed name has been determined to be
- 15           ~~deceptively similar~~indistinguishable; or
- 16           b. A certified copy of a judgment of a court in this state establishing the prior right of
- 17           the applicant to the use of the name in this state.
- 18           4. Subsection 3 does not affect the right of a limited partnership existing on the effective
- 19           date of this chapter, or a foreign limited partnership authorized to do business in this
- 20           state on that date, to continue the use of its name.
- 21           5. This section and section 45-10.2-11 do not:
- 22           a. Abrogate or limit:
- 23           (1) The law of unfair competition or unfair practices;
- 24           (2) Chapter 47-25;
- 25           (3) The laws of the United States with respect to the right to acquire and protect
- 26           copyrights, trade names, trademarks, service names, and service marks; or
- 27           (4) Any other right to the exclusive use of names or symbols; or
- 28           b. Derogate the common law or the principles of equity.
- 29           6. A limited partnership that is the surviving organization in a merger with one or more
- 30           organizations, or that acquires by sale, lease, or other disposition to or exchange with
- 31           an organization all or substantially all of the assets of another organization including its



- 1 name, may include in its name, subject to the requirements of subsection 1, the name  
2 of any of the organizations, if the other organization whose name is sought to be used:
- 3 a. Was incorporated, organized, formed, or registered under the laws of this state;
  - 4 b. Is authorized to transact business or conduct activities in this state;
  - 5 c. Holds a reserved name in the manner provided in section 10-19.1-14,  
6 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - 7 d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - 8 e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - 9 f. Holds a trademark or service mark registered in the manner provided in chapter  
10 47-22.
- 11 7. The use of a name by a limited partnership in violation of this section does not affect  
12 or vitiate its limited partnership existence. However, a court in this state may, upon  
13 application of the state or of an interested or affected person, enjoin the limited  
14 partnership from doing business under a name assumed in violation of this section,  
15 although its certificate of limited partnership may have been filed with the secretary of  
16 state.
- 17 8. A limited partnership whose period of existence has expired or that is involuntarily  
18 dissolved by the secretary of state as provided in section 45-10.2-108 or  
19 45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of  
20 limited partnership pursuant to section 45-10.2-23 unless the name has been adopted  
21 for use or reserved by another person, in which case the filing will be rejected unless  
22 the filing is accompanied by a written consent or judgment pursuant to subsection 3. A  
23 limited partnership that cannot reacquire the use of its limited partnership name shall  
24 adopt a new limited partnership name that complies with this section by refiling a  
25 certificate of limited partnership as provided in section 45-10.2-23; by amending its  
26 certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the  
27 limited partnership pursuant to section 45-10.2-108. If the new limited partnership  
28 name has been adopted for use or reserved by another person, the filing will be  
29 rejected unless the filing is accompanied by a written consent or judgment as provided  
30 in subsection 3.

1       9. Subject to section 45-10.2-78, this section applies to ~~anya~~ foreign limited partnership  
2       transacting business in this state, having a certificate of authority to transact business  
3       in this state, or applying for a certificate of authority.

4       10. A limited partnership ~~that files~~filing its certificate of limited partnership with an effective  
5       date later than the date of filing as provided in subsection 3 of section 45-10.2-27 shall  
6       maintain the right to the name until the effective date.

7       **SECTION 10. AMENDMENT.** Subsection 13 of section 45-10.2-109 of the North Dakota  
8       Century Code is amended and reenacted as follows:

9       13. Filing a consent to use a ~~deceptively similar~~ name, ten dollars.

10       **SECTION 11. AMENDMENT.** Section 45-11-01 of the North Dakota Century Code is  
11       amended and reenacted as follows:

12       **45-11-01. Partnership - Use of fictitious name.**

- 13       1. As used in this section, "fictitious name" means a name assumed to identify a  
14       partnership and which does not include in its name:
- 15       a. The true name of each organizational partner;
  - 16       b. The first name and surname of each partner; or
  - 17       c. The surname of each partner, repeating a surname if more than one partner has  
18       the same surname.
- 19       2. ~~Any~~A partnership transacting business in this state under a fictitious name or under a  
20       designation ~~that does not show~~showing the names of the persons interested as  
21       partners must file a fictitious name certificate with the secretary of state, together with  
22       a filing fee of twenty-five dollars. When a partnership has more than two members, an  
23       additional three dollars must be paid for each additional member not to exceed two  
24       hundred fifty dollars. A limited partnership or a foreign limited partnership transacting  
25       business under a name filed under chapter 45-10.2 and as provided in section  
26       45-11-03 or a partnership transacting business under a name filed under section  
27       45-13-05 is not required to file a fictitious name certificate under this section.
- 28       3. The fictitious name:
- 29       a. Must be expressed in letters or characters used in the English language as those  
30       letters or characters appear in the American standard code for information  
31       interchange (ASCII) table.

- 1           b. May not contain the word "corporation", "company", "incorporated", "limited  
2           liability company", or "limited", or an abbreviation of any of those words. This  
3           subsection does not preclude the word "limited" from being used in conjunction  
4           with the word "partnership".
- 5           c. ~~May not be the same as or deceptively similar to any~~Must be distinguishable in  
6           the records of the secretary of state from a name reserved or registered with the  
7           secretary of state unless there is filed with the fictitious name certificate a written  
8           consent from the holder of the ~~similar~~indistinguishable name to use the proposed  
9           name and filing fee of ten dollars, whether domestic or foreign, including:
- 10           (1) ~~Any~~A corporate name;  
11           (2) ~~Any~~A limited liability company name;  
12           (3) ~~Any~~A trade name;  
13           (4) Any other fictitious partnership name;  
14           (5) ~~Any~~A limited partnership name;  
15           (6) ~~Any~~A limited liability partnership name;  
16           (7) ~~Any~~A limited liability limited partnership name; or  
17           (8) ~~Any~~A trademark or service mark.
- 18           4. The secretary of state shall determine whether a fictitious partnership name is  
19           distinguishable in the secretary of state's records from another name for purposes of  
20           this chapter and may adopt rules reasonable or necessary for making these  
21           determinations.

22           **SECTION 12. AMENDMENT.** Section 45-13-04.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **45-13-04.1. Partnership name.**

- 25           1. A partnership name filed in a statement under section 45-13-05:
- 26           a. Must be in the English language or in any other language expressed in English  
27           letters or characters;
- 28           b. May contain the name of ~~anya~~any partner;
- 29           c. May not contain the word "corporation", "company", "incorporated", "limited  
30           liability company", "limited partnership", "limited liability partnership", "limited  
31           liability limited partnership", or ~~anyan~~any abbreviation of these words;

- 1           d.    May not contain a word or phrase that indicates or implies that the partnership:  
2           (1)   Is organized for a purpose other than a lawful purpose for which a  
3                 partnership may be organized under this chapter; or  
4           (2)   May not be formed under this chapter; and  
5           e.   ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the  
6                 records of the secretary of state from:  
7           (1)   The name, whether foreign and authorized to do business in this state or  
8                 domestic, unless filed with the statement is a record which complies with  
9                 subsection 3 of:  
10           (a)   Another partnership;  
11           (b)   A limited liability company;  
12           (c)   A corporation;  
13           (d)   A limited partnership;  
14           (e)   A limited liability partnership; or  
15           (f)   A limited liability limited partnership;  
16           (2)   A name, the right of which is, at the time of filing, reserved in the manner  
17                 provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,  
18                 45-13-04.2, or 45-22-05;  
19           (3)   A fictitious name registered in the manner provided in chapter 45-11; ~~or~~  
20           (4)   A trade name registered in the manner provided in chapter 47-25; or  
21           (5)   A trademark or service mark registered in the manner provided in chapter  
22                 47-22.  
23           2.   The secretary of state shall determine whether a partnership name is ~~deceptively-~~  
24                 ~~similar to~~distinguishable in the secretary of state's records from another name for  
25                 purposes of this chapter and may adopt rules reasonable or necessary for making  
26                 these determinations.  
27           3.   If the secretary of state determines a partnership name is ~~deceptively similar-~~  
28                 ~~to~~indistinguishable in the secretary of state's records from another name for purposes  
29                 of this chapter, ~~then~~ the partnership name may not be used unless there is filed with  
30                 the statement:

- 1           a. The written consent of the holder of the rights to the name to which the proposed  
2           name is determined to be ~~deceptively similar~~indistinguishable; or
- 3           b. A certified copy of a judgment of a court in this state establishing the earlier right  
4           of the applicant to the use of the name in this state.
- 5           4. This section does not affect the right of a partnership existing on July 1, 1999, or a  
6           foreign partnership authorized to do business in this state on July 1, 1999, to continue  
7           the use of the foreign partnership's name.
- 8           5. This section and section 45-13-04.2 do not:
- 9           a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25;  
10           the laws of the United States with respect to the right to acquire and protect  
11           copyrights, trade names, trademarks, service names, service marks; or any other  
12           rights to the exclusive use of a name or symbol.
- 13           b. Derogate the common law or any principle of equity.
- 14           6. A partnership that is the surviving organization in a merger with one or more other  
15           organizations, or that acquires by sale, lease, or other disposition to or exchange with  
16           an organization all or substantially all of the assets of another organization including its  
17           name, may have the same name, subject to the requirements of subsection 1, as that  
18           used in this state by any of the other organizations if the other organization whose  
19           name is sought to be used:
- 20           a. Is formed under the laws of this state;
- 21           b. Is authorized to transact business or conduct activities in this state;
- 22           c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11,  
23           10-32.1-12, 45-10.2-11, 45-13-04.2, or 45-22-05;
- 24           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 25           e. Holds a trade name registered in the manner provided in chapter 47-25.
- 26           7. The use of a name by a partnership in violation of this section does not affect or vitiate  
27           the partnership existence of the partnership. However, a court in this state may, upon  
28           application of the state or of an interested or affected person, enjoin the partnership  
29           from doing business under a name assumed in violation of this section, although a  
30           statement may have been filed with the secretary of state.

- 1           8. If the period of existence of the partnership is expired or a statement of a partnership  
2           filed under section 45-13-05 is expired, then the partnership may reacquire the right to  
3           use that name by refiling a statement pursuant to section 45-13-05, unless the name  
4           was adopted for use or reserved by another person, in which case the filing must be  
5           rejected unless the filing is accompanied by a written consent or judgment pursuant to  
6           subsection 3. A partnership that cannot reacquire the use of its partnership name shall  
7           adopt a new partnership name that complies with this section.

8           **SECTION 13. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10          **45-22-04. Limited liability partnership - Name.**

- 11          1. The name of a limited liability partnership:
- 12           a. Must be expressed in letters or characters in the English language as those  
13           letters or characters appear in the American standard code for information  
14           interchange (ASCII) table.
- 15           b. Must contain the words "limited liability partnership" or the abbreviation "L.L.P." or  
16           the abbreviation "LLP", either of which abbreviations may be used  
17           interchangeably for all purposes authorized by this chapter, including real estate  
18           matters, contracts, and filings with the secretary of state.
- 19           c. May not contain the word "corporation", "company", "incorporated", "limited  
20           liability company", "limited partnership", "limited liability limited partnership", or  
21           ~~any~~an abbreviation of these words.
- 22           d. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~  
23           ~~that~~implying the limited liability partnership:
- 24           (1) Is formed for a purpose other than:
- 25               (a) A lawful purpose for which a limited liability partnership may be  
26               formed under this chapter; or
- 27               (b) For a purpose stated in its registration; or
- 28           (2) May not be formed under this chapter.
- 29           e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the  
30           records of the secretary of state from:

- 1                   (1) The name, whether foreign and authorized to do business in this state or  
2                   domestic, unless there is filed with the registration a record that complies  
3                   with subsection 3, of:
- 4                   (a) Another limited liability partnership;  
5                   (b) A corporation;  
6                   (c) A limited liability company;  
7                   (d) A limited partnership; or  
8                   (e) A limited liability limited partnership;
- 9                   (2) A name, the right to which is at the time of registration reserved in the  
10                  manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,  
11                  45-13-04.2, or 45-22-05;
- 12                  (3) A fictitious name registered in the manner provided in chapter 45-11;  
13                  (4) A trade name registered in the manner provided in chapter 47-25; or  
14                  (5) A trademark or service mark registered in the manner provided in chapter  
15                  47-22.
- 16                  f. Need not be filed as provided in chapter 45-11 except if transacting business  
17                  under a name other than the name as registered under this chapter.
- 18                  2. The secretary of state shall determine whether a name is ~~deceptively similar~~  
19                  to distinguishable in the secretary of state's records from another name for purposes of  
20                  this chapter and may adopt rules reasonable or necessary for making these  
21                  determinations.
- 22                  3. If the secretary of state determines ~~that~~ a limited liability partnership name is  
23                  ~~deceptively similar to~~ indistinguishable in the secretary of state's records from another  
24                  name for purposes of this chapter, the limited liability partnership name may not be  
25                  used unless there is filed with the registration:
- 26                  a. The written consent of the holder of the rights to the name to which the proposed  
27                  name has been determined to be ~~deceptively similar~~ indistinguishable; or  
28                  b. A certified copy of a judgment of a court in this state establishing the earlier right  
29                  of the applicant to the use of the name in this state.
- 30                  4. This section and section 45-22-05 do not:
- 31                  a. Abrogate or limit:

- 1                   (1) The law of unfair competition or unfair practices;
- 2                   (2) Chapter 47-25;
- 3                   (3) The laws of the United States with respect to the right to acquire and protect
- 4                         copyrights, trade names, trademarks, service names, and service marks; or
- 5                   (4) Any other rights to the exclusive use of names or symbols.
- 6                   b. Derogate the common law or principles of equity.
- 7                   5. A limited liability partnership that is the surviving organization in a merger with one or
- 8                         more organizations, or that acquires by sale, lease, or other disposition to or exchange
- 9                         with a domestic organization all or substantially all of the assets of another
- 10                        organization including its name, may have the same name, subject to the
- 11                        requirements of subsection 1, as that used in this state by any of the other
- 12                        organizations, if the other organization whose name is sought:
- 13                    a. Is incorporated, organized, formed, or registered under the laws of this state;
- 14                    b. Is authorized to transact business or conduct activities in this state;
- 15                    c. Holds a reserved name in the manner provided in section 10-19.1-14,
- 16                         10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
- 17                    d. Holds a fictitious name registered in the manner provided in chapter 45-11;
- 18                    e. Holds a trade name registered in the manner provided in chapter 47-25; or
- 19                    f. Holds a trademark or service mark registered in the manner provided in chapter
- 20                         47-22.
- 21                   6. The use of a name by a limited liability partnership in violation of this section does not
- 22                         affect or vitiate the limited liability partnership's status as a limited liability partnership.
- 23                         However, a court of this state may, upon application of the state or of an interested or
- 24                         affected person, enjoin the limited liability partnership from doing business under a
- 25                         name assumed in violation of this section, even though the limited liability
- 26                         partnership's registration may have been filed with the secretary of state.
- 27                   7. A limited liability partnership whose registration has expired or whose registration has
- 28                         been forfeited as provided in section 45-22-21.1 may reacquire the right to use that
- 29                         name by refiling a registration as provided in section 45-22-03 unless the name has
- 30                         been adopted for use or reserved by another person, in which case the filing will be
- 31                         rejected unless the filing is accompanied by a written consent or judgment pursuant to



- 1 subsection 3. A limited liability partnership that cannot reacquire the use of its limited  
2 liability partnership name shall adopt a new limited liability partnership name that  
3 complies with this section:
- 4 a. By refiling a registration as provided in section 45-22-03;  
5 b. By amending its registration as provided in section 45-22-03; or  
6 c. By reinstating the limited liability partnership pursuant to section 45-22-21.1,  
7 unless the name has been adopted for use or reserved by another person, in  
8 which case the filing will be rejected unless the filing is accompanied by a written  
9 consent or judgment as provided in subsection 3.
- 10 8. With respect to foreign limited liability partnerships:
- 11 a. A foreign limited liability partnership may register under any name that would be  
12 available to a domestic limited liability partnership, regardless of whether the  
13 name is the same under which the foreign limited liability partnership is  
14 authorized in the jurisdiction of original registration.
- 15 b. A fictitious name certificate must be filed as provided in chapter 45-11 only if  
16 registering under a name other than the name as authorized in the jurisdiction of  
17 original registration.
- 18 9. A limited liability partnership that files its registration with an effective date later than  
19 the date of filing as provided in subsection 9 of section 45-22-03 shall maintain the  
20 right to the name until the effective date.

21 **SECTION 14. AMENDMENT.** Section 45-23-03 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **45-23-03. Limited liability limited partnership name.**

- 24 1. The name of each limited liability limited partnership as set forth in the limited liability  
25 limited partnership's certificate of limited liability limited partnership:
- 26 a. Must be expressed in letters or characters used in the English language as those  
27 letters or characters appear in the American standard code for information  
28 interchange (ASCII) table.
- 29 b. Must contain without abbreviation the words "limited liability limited partnership"  
30 or the abbreviation "L.L.L.P." or "LLLLP", either of which abbreviation may be used

- 1 interchangeably for any purpose authorized by this chapter including real estate  
2 matters, contracts, and filings with the secretary of state.
- 3 c. May contain the name of ~~anya~~ partner.
- 4 d. May not contain the word "corporation", "company", "incorporated", "limited  
5 liability company", "limited liability partnership", or ~~anyan~~ abbreviation of these  
6 words.
- 7 e. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~  
8 ~~that implying~~ the limited liability limited partnership:
- 9 (1) Is organized for a purpose other than:
- 10 (a) A lawful purpose for which a limited liability limited partnership may be  
11 organized under this chapter; or
- 12 (b) For a purpose stated in its certificate of limited liability limited  
13 partnership; or
- 14 (2) May not be organized under this chapter.
- 15 f. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the  
16 records of the secretary of state from:
- 17 (1) The name, whether foreign and authorized to do business in this state or  
18 domestic, unless there is filed with the certificate a record in compliance  
19 with subsection 3, of:
- 20 (a) Another limited liability limited partnership;
- 21 (b) A limited partnership;
- 22 (c) A corporation;
- 23 (d) A limited liability company; or
- 24 (e) A limited liability partnership;
- 25 (2) A name the right to which is, at the time of organization, reserved in the  
26 manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,  
27 45-13-04.2, or 45-22-05;
- 28 (3) A fictitious name registered in the manner provided in chapter 45-11;
- 29 (4) A trade name registered in the manner provided in chapter 47-25; or
- 30 (5) A trademark or service mark registered in the manner provided in chapter  
31 47-22.

- 1           2.    The secretary of state shall determine whether a limited liability limited partnership  
2           name is ~~deceptively similar to~~distinguishable in the secretary of state's records from  
3           another name for purposes of this chapter and may adopt rules reasonable or  
4           necessary for making these determinations.
- 5           3.    If the secretary of state determines a limited liability limited partnership name is  
6           ~~deceptively similar to~~indistinguishable in the secretary of state's records from another  
7           name for purposes of this chapter, the limited liability limited partnership name may not  
8           be used unless there is filed with the certificate:
- 9           a.    The written consent of the holder of the registered trade name or the holder of  
10           the rights to the name to which the proposed name has been determined to be  
11           ~~deceptively similar~~indistinguishable; or
- 12           b.    A certified copy of a judgment of a court in this state establishing the earlier right  
13           of the applicant to the use of the name in this state.
- 14           4.    This section does not:
- 15           a.    Abrogate or limit:
- 16                (1)   The law of unfair competition or unfair practices;
- 17                (2)   Chapter 47-25;
- 18                (3)   The laws of the United States with respect to the right to acquire and protect  
19                copyrights, trade names, trademarks, service names, and service marks; or
- 20                (4)   Any other rights to the exclusive use of any name or symbol.
- 21           b.    This section does not derogate the common law or the principles of equity.
- 22           5.    A limited liability limited partnership that is the surviving organization in a merger with  
23           one or more organizations, or that acquires by sale, lease, or other disposition to or  
24           exchange with an organization all or substantially all of the assets of another  
25           organization, including its name, may include in the limited liability limited partnership's  
26           name, subject to the requirements of subsection 1, the name of any of the other  
27           organizations, if the other organization whose name is sought to be used:
- 28           a.    Is incorporated, organized, formed, or registered under the laws of this state;
- 29           b.    Is authorized to transact business or conduct activities in this state;
- 30           c.    Holds a reserved name in the manner provided in section 10-19.1-14,  
31           10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- 1           d. Holds a fictitious name registered in the manner provided in chapter 45-11;
- 2           e. Holds a trade name registered in the manner provided in chapter 47-25; or
- 3           f. Holds a trademark or service mark registered in the manner provided in chapter
- 4                 47-22.
- 5         6. The use of a name of a limited liability limited partnership in violation of this section
- 6           does not affect or vitiate a limited liability limited partnership's existence. However, a
- 7           court in this state may, upon application of the state or of an interested or affected
- 8           person, enjoin the limited liability limited partnership from doing business under a
- 9           name assumed in violation of this section, although a certificate of limited liability
- 10          limited partnership may have been filed with the secretary of state.
- 11         7. A limited liability limited partnership whose period of existence has expired or that is
- 12           involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 or
- 13           45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of
- 14           limited liability limited partnership pursuant to section 45-23-04, unless the name has
- 15           been adopted for use or reserved by another person, in which case the filing will be
- 16           rejected unless the filing is accompanied by a written consent or judgment as provided
- 17           in subsection 3. A limited liability limited partnership that cannot reacquire the use of its
- 18           limited liability limited partnership name shall adopt a new limited liability limited
- 19           partnership name that complies with the provisions of this section:
- 20           a. By refiling the certificate of limited liability limited partnership pursuant to section
- 21                 45-23-04;
- 22           b. By amending pursuant to section 45-10.2-24; or
- 23           c. By reinstating pursuant to section 45-10.2-108, unless the name has been
- 24                 adopted for use or reserved by another person, in which case the filing will be
- 25                 rejected unless the filing is accompanied by a written consent or judgment
- 26                 pursuant to subsection 3.
- 27         8. Subject to section 45-23-07, this section applies to ~~any~~ foreign limited liability limited
- 28           partnership transacting business in this state, having a certificate of authority to
- 29           transact business in this state, or applying for a certificate of authority.
- 30         9. A limited liability limited partnership that files its certificate of limited liability limited
- 31           partnership with an effective date later than the date of filing as provided in

1 subsection 1 of section 45-23-05 shall maintain the right to the name until the effective  
2 date.

3 **SECTION 15. AMENDMENT.** Subsection 13 of section 45-23-08 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 13. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

6 **SECTION 16. AMENDMENT.** Section 47-25-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **47-25-03. Trade name - Nature.**

9 1. A trade name:

10 4. a. Must be expressed in letters or characters used in the English language as those  
11 letters or characters appear in the American standard code for information  
12 interchange (ASCII) table.

13 2. b. May not contain the word "company", "corporation", "incorporated", "limited",  
14 "limited liability company", "limited partnership", "limited liability partnership",  
15 "limited liability limited partnership", or any abbreviation of any of those words  
16 unless the owner of the trade name is a corporation, limited liability company,  
17 limited partnership, limited liability partnership, or limited liability limited  
18 partnership as indicated by the words used in the name.

19 3. ~~May not be the same as or deceptively similar to any~~

20 c. Must be distinguishable in the records of the secretary of state from a name  
21 reserved or registered with the secretary of state unless there is filed with the  
22 registration a written consent from the holder of the ~~similar~~indistinguishable name  
23 to use the proposed name and filing fee of ten dollars, whether domestic or  
24 foreign, including:

25 a. ~~Any~~

26 (1) A corporate name;

27 b. ~~Any~~

28 (2) A limited liability company name;

29 e. (3) Any other trade name;

30 d. ~~Any~~

31 (4) A fictitious partnership name;

- 1 e. Any  
2 (5) A limited partnership name;  
3 f. Any  
4 (6) A limited liability partnership name;  
5 g. Any  
6 (7) A limited liability limited partnership name; or  
7 h. Any  
8 (8) A trademark or service mark.  
9 4. d. That is a franchise must be accompanied by a written consent from the  
10 franchiser.

11 2. The secretary of state shall determine whether a trade name is distinguishable in the  
12 secretary of state's records from another trade name for purposes of this chapter and  
13 may adopt rules reasonable or necessary for making these determinations.

14 **SECTION 17. CONTINGENT EFFECTIVE DATE.** This Act becomes effective upon receipt  
15 by the legislative council of the certification by the secretary of state attesting that all necessary  
16 administrative rules and information technology components and systems are ready for  
17 implementation of this Act.