WEST VIRGINIA CODE CHAPTER 31B ARTICLE 8

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§31B-8-801. Events causing dissolution and winding up of company's business.

(a) In this section, "future distributions" means the total distributions that, as of the date of dissociation, are reasonably estimated to be made to the remaining members if the company were continued until the projected date of its termination, reduced by the amount of distributions that would have been made to the remaining members if the business of the company were dissolved and wound up on the date of dissociation.

(b) A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

(1) An event specified in the operating agreement;

(2) Consent of the number or percentage of members specified in the operating agreement;

(3) Dissociation of a member who is also a manager or, if none, a member of an at-will company, and dissociation of a member who is also a manager or, if none, a member of a term company but only if the dissociation was for a reason provided in section 6-601(7) through (11) and occurred before the expiration of the specified term, but the company is not dissolved and required to be wound up by reason of the dissociation if:

(i) Within ninety days after the dissociation, the business of the company is continued by the agreement of:

(A) The remaining members that would be entitled to receive a majority of any distributions that would be made to them assuming the business of the company were dissolved and wound up on the date of the dissociation; and

(B) The remaining members that would be entitled to receive a majority of any future distributions that would be made to them assuming the business of the company were continued after the date of the dissociation; or

(ii) The business of the company is continued under a right to continue stated in the operating agreement;

(4) An event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within ninety days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a member or a dissociated member, upon entry of a judicial decree that:

(i) The economic purpose of the company is likely to be unreasonably frustrated;

(ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

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(iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(iv) The company failed to purchase the petitioner's distributional interest as required by section 7-701; or

(v) The managers or members in control of the company have acted, are acting or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner;

(6) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

(i) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer; or

(ii) At any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer.

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§31B-8-802. Limited liability company continues after dissolution.

(a) Subject to subsection (b) of this section, a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(1) The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(2) The rights of a third party accruing under section 8-804(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

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§31B-8-803. Right to wind up limited liability company's business.

(a) After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative or transferee, the circuit court, for good cause shown, may order judicial supervision of the winding up.

(b) A legal representative of the last surviving member may wind up a limited liability company's business.

(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 8-806, settle disputes by mediation or arbitration and perform other necessary acts.

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§31B-8-804. Member's or manager's power and liability as agent after dissolution.

(a) A limited liability company is bound by a member's or manager's act after dissolution that:

(1) Is appropriate for winding up the company's business; or

(2) Would have bound the company under section 3-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

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§31B-8-805. Articles of termination.

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary of State articles of termination stating:

(1) The name of the company;

(2) The date of the dissolution; and

(3) That the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effective date, if specified in the articles of termination.

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§31B-8-806. Distribution of assets in winding up limited liability company's business.

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

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§31B-8-807. Known claims against dissolved limited liability company.

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

(1) Specify the information required to be included in a claim;

(2) Provide a mailing address where the claim is to be sent;

(3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met, and:

(1) The claim is not received by the specified deadline; or

(2) In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within ninety days after the receipt of the notice of the rejection.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

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§31B-8-808. Other claims against dissolved limited liability company.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice must:

(1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited liability company's principal office is located or, if none in this state, in which its designated office is or was last located;

(2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and

(3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within five years after the publication date of the notice:

(1) A claimant who did not receive written notice under section 8-807;

(2) A claimant whose claim was timely sent to the dissolved company but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

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§31B-8-809. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:

(1) The company fails to pay any fees, taxes, or penalties imposed by this chapter or other law within 60 days after they are due;

(2) The company fails to deliver its annual or biennial report to the Secretary of State within 60 days after it is due;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the company;

(4) The company is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

(b) A limited liability company administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31B-8-811 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31B-8-812 of this code.

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§31B-8-810. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under §31B-8-809 of this code for administratively dissolving a limited liability company, the Secretary of State shall notify the company by certified mail with written notice of the determination pursuant to §31B-1-111 of this code.

(b) If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under §31B-1-111 of this code, the Secretary of State shall administratively dissolve the company by signing and filing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall send electronic notice to the company with a copy of the certificate of dissolution if the Secretary of State has an email address on file for the company.

(c) A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under §31B-8-802 of this code and to notify claimants under §31B-8-807 and §31B-8-808 of this code.

(d) The administrative dissolution of a company does not terminate the authority of its agent for service of process.

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§31B-8-811. Reinstatement following administrative dissolution.

(a) A limited liability company administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the company and the effective date of its administrative dissolution;

(2) State that the ground for dissolution either did not exist or have been eliminated;

(3) State that the company's name satisfies the requirements of section 1-105; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.

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§31B-8-812. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the company with a record that explains the reason or reasons for denial.

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the company's application for reinstatement and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

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