WEST VIRGINIA CODE CHAPTER 31b ARTICLE 6

WV Legislature

§31B-6-601. Events causing member's dissociation.

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(i) It is unlawful to carry on the company's business with the member;

(ii) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(iii) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(iv) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(i) Engaged in wrongful conduct that adversely and materially affected the company's business;

(ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4-409; or

(iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

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(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the member or of all or substantially all of the member's property; or

(iv) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(i) The member's death;

(ii) The appointment of a guardian or general conservator for the member; or

(iii) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate or trust other than a business trust.

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§31B-6-602. Member's power to dissociate; wrongful dissociation.

(a) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to section 6-601(1).

(b) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(1) It is in breach of an express provision of the agreement; or

(2) Before the expiration of the specified term of a term company:

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination under section 6-601(6);

(iii) The member is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(d) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (b) of this section, damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

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§31B-6-603. Effect of member's dissociation.

(a) If under section 8-801 a member's dissociation from a limited liability company results in a dissolution and winding up of the company's business, article eight of this chapter applies. If a member's dissociation from the company does not result in a dissolution and winding up of the company's business under section 8-801:

(1) In an at-will company, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter; and

(2) In a term company:

(i) If the company dissolves and winds up its business on or before the expiration of its specified term, article eight of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter on the date of the expiration of the term specified at the time of the member's dissociation.

(b) Upon a member's dissociation from a limited liability company:

(1) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in section 8-803, and the member ceases to be a member and is treated the same as a transferee of a member;

(2) The member's duty of loyalty under section 4-409(b)(3) terminates; and

(3) The member's duty of loyalty under section 4-409(b)(1) and (2) and duty of care under section 4-409(c) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to section 8-803.

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