

Chapter 1 : Limited Liability Company (LLC)

Dissolving an LLC: Overview. At some point, you may decide to end your limited liability company. This process is called dissolving the blog.quintoapp.comng your business down will be hard enough - selling off inventory, notifying your creditors, finalizes your debt and terminating any agreements - but there are legal requirements as well.

Kane Bennett Limited Liability Companies in Connecticut, and every other state, are created by statutory law. The LLC may be dissolved by: At the time or upon the occurrence of events specified in writing in the articles of organization or the operating agreement; If not provided in writing under 1, then by affirmative vote, approval, or consent of at least a majority in interest of the members; or By the entry of a judicial decree of dissolution. Many times they are drafted by an attorney. Operating agreements are not required. However, they are a good idea for a variety of reasons, including the issue of dissolution. It is also a good idea to have an attorney draft the operating agreement rather than resorting to Legalzoom. I have seen many instances of operating agreements from Legalzoom that simply do not cover the likely problems members of an LLC face when there is more than one member. If members of an LLC do not have an operating agreement that defines how the company may dissolve and wind up its affairs, then by law the decision is controlled by General Statutes. This essentially means a majority vote can dissolve the LLC. I recently came across an operating agreement for an LLC that covered many aspects of the affairs of the LLC, but it left out dissolution. As such, the members of the LLC faced a situation where a super majority two thirds in this case was required to permit a transfer of interest, but a simple majority would suffice for dissolution. The minority members had bargained for some ability to have input on transfer of interests, but neglected to address dissolution. The failure to address it in the operating agreement in this particular circumstance provided leverage for the holder of the simple majority interest. A member moving for dissolution likely needs to show the trial court that the other members are not carrying on the business in accordance with the governing document for the LLC. One circumstance where a trial court likely will grant dissolution is where the members are in a deadlock. Deadlock tends to happen when the voting interests of the LLC are equal i. You see deadlocks mostly when there are two or more partners and the interests are divided equally such that the opposing sides have equal interests. If a dispute occurs, and the members did not address a means of breaking a deadlock in the operating agreement, then a member can seek to file a lawsuit in superior court requesting that the court dissolve the LLC. Once an LLC is dissolved the company must wind up its affairs. The person winding up the affairs of the LLC may prosecute or defendant lawsuits on behalf of the LLC, settle and close business, dispose of and transfer property, discharge the liabilities of the LLC, and distribute any remaining assets. The LLC essentially continues to exist during its winding up phase and can bring a lawsuit or face a lawsuit. Winding up may also be addressed in the operating agreement.

Chapter 2 : How to End a Business Through LLC Dissolution | US Legal Forms

In circumstances of judicial dissolution of an LLC, "the District Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement."

An Overview of Their Characteristics and Advantages The term "limited liability company" has been confusing to many, lawyers and lay people alike, because it triggers two distinct mental associations, 1 with the limited partnership, and 2 with a company or corporation. In fact, these associations are intended, because a limited liability company "LLC" is an entity which partakes of characteristics of both a limited partnership and a corporation. Like limited partnerships, limited liability companies which qualify as discussed below will be accorded pass-through taxation on their income. It is this duality that drove the development of limited liability companies, and which advocates for their use in many situations. The purpose of this outline is to review the historical development of this new form of entity, including its adoption by Georgia; the principal characteristics of a limited liability company, with relevant comparisons to the characteristics of other forms of entity, including C and S corporations and limited partnerships; the manner in which a limited liability company may qualify for partnership flow-through taxation for federal and state purposes; various legal and operational issues implicated by limited liability companies and their resolution in the Georgia Limited Liability Company Act; and general planning issues in the effective utilization of a Georgia limited liability company.

Historical Background and Legislative History A. The first domestic statute providing for the creation of a "limited liability company" hereinafter referred to as "LLC" was created by statute in Wyoming, in . The original genesis for such entities is unclear, although they apparently were initially developed for use as ownership vehicles for the oil and gas industry. Although the Internal Revenue Service the "IRS or "Service" issued a Private Letter Ruling to one Wyoming LLC stating that it would be treated as a partnership for tax purposes, the Service contemporaneously issued Proposed Regulations to deny partnership classification to any organization where no individual had liability for the debts of the organization. Due to unfavorable commentary on the Regulations, these were withdrawn in , and the IRS instituted a study to review the proper classification of LLCs. However, due to continuing uncertainty both as to the manner in which LLCs would be classified for tax purposes by the Service, as well as whether the liability protection provisions would be effective, few businesses availed themselves of the opportunity to form LLCs in either Wyoming or Florida. Only in , when the Service concluded that the standing partnership classification Regulations should be applied to LLCs -- i. Issuance of this Revenue Ruling signaled the viability of this new form of entity. A swift response at the state level followed to this and to the subsequent adoption of the "Check-the-Box" entity classification regulations. The goal is to have an entity which has the corporate characteristic of limited liability and which has flow through tax characteristics, such that income is taxed only once, i. LLCs are in large measure a response to limitations on the availability of S corporations for federal and state tax purposes: Baker and with the endorsement of the Atlanta Bar Association. This Act, which enabled foreign LLCs to qualify to do business in Georgia, was signed into law on April 16, , with an effective date of July 1, . This Act was introduced and passed by the Georgia General Assembly at its session. That is to say, an LLC organized under one of such statutes would always constitute an association taxable as a partnership for federal income tax purposes under the entity classification rules then in effect. In addition to the Wyoming statute, other initial "bullet proof" statutes included the initial versions of the Colorado, Virginia, Nevada and West Virginia LLC statutes. These "flexible" statutes, such as those of Delaware, Florida, Kansas, Texas, Maryland and Oklahoma, permit parties to structure their LLC in such a fashion so as to be taxable as either a partnership or a corporation for federal tax purposes. Although the greater flexibility of these statutes made it possible to address business needs with great particularity, it also created opportunities for professional foot faults, not only through inadvertently failing to achieve the desired partnership tax status, but also as to issues of entity governance. Recently some states which had "bullet proof" statutes, such as Colorado, have enacted revised "flexible" statutes. The National Conference of

Commissioners has also prepared a form Uniform Limited Liability Company Act which was approved in August of and may well lead to greater standardization at the state level. The adoption of the liberalized "Check-the-Box" entity classification rules, discussed in greater detail below, has caused many states to revise their statutes to move to the "flexible" model and, in some cases, to cause their LLC entities to bear more similarity to corporations than was initially the case. Principles Underlying Georgia Statute. The Georgia LLC statute falls decidedly into the "flexible" model. In working with the Georgia LLC Act, it is helpful to keep in mind several overriding principles that guided the drafting effort: The first principle that the drafters used in preparing the Georgia statute was to endorse, to the fullest extent possible, freedom of contract. In only a relatively few cases are statutory strictures mandatory. In almost all cases, the rights of the parties can be varied by agreement. Elaborate and Specific Statutory Default Rules. As a counterpoise to this desire for contractual flexibility, however, was a desire for clarity of the governing rules where the parties did not formalize their agreements. A number of members of the committee, based upon years of practice in the partnership area, expressed concerns about the uncertainty of so many legal issues affecting partnerships. Such uncertainties can result both because of failure by the parties to reach, or articulate, a meeting of the minds or because of basic ambiguities in the law of partnerships. Accordingly, the statute provides clear and often elaborate default rules in the absence of an agreement to the contrary. Requirement of Written Agreement. To avoid the serious proof difficulties that can arise from oral agreements in complex business relationships, a third overriding principle is that in order for the parties to avail themselves of freedom of contract with respect to their LLC, their decisions must be evidenced in writing in the governing instruments for the LLC. Thus, use of the Georgia LLC act places a premium on the drafting and implementation of a well written agreement. Parallel Existing Rules for Other Entities. In the process of constructing a new form of entity, which at various times partakes of characteristics of a limited partnership, a general partnership or a corporation, the drafters of the Act confronted several instances where the conventions of one business form had to be chosen over the other e. Although generalizations are treacherous, generally, Georgia LLCs will more closely resemble in documentation and matters of governance a limited partnership or in some cases a joint venture than a C corporation or an S corporation The primary difference between a Georgia LLC and a Georgia limited partnership is that the limited partnership is managed by one or more general partners who are personally liable for the obligations and debts of the partnership. In a Georgia LLC no member has personal liability. In states other than Georgia another critical difference between LLCs and limited partnerships is the degree of participation or control permitted to be exercised by limited partners i. A Georgia LLC may be formed for any lawful purpose. Unless the articles of organization or a written operating agreement provide a more limited purpose, the LLC is presumed to be to empowered to engage in any lawful business in which corporations for profit, professional corporations, limited partnerships or general partnerships formed in Georgia may engage. Thus, professionals are permitted to practice in the form of LLCs. The ramifications of this decision are discussed in greater detail at Section VI below. Formation and Governing Instruments. In the case of LLCs in which management is delegated to one or more managers, the Operating Agreement may also include provisions similar to corporate bylaws or shareholder agreements. Georgia LLCs may be formed by one or more organizers, by filing articles of organization with the Secretary of State, which articles contain the name s of the organizers, the name of the LLC, as reserved with and approved by the Secretary of State as distinguishable and which must contain the words "limited liability company" or "limited company" or L. Unlike a limited partnership, here the LLC follows the corporate model. The Articles can be signed by anyone. Thus, the Articles of Organization need be only a skeletal document. Under the statute as originally enacted, the Articles needed to include the latest date on which the LLC was to dissolve. This requirement was deleted by amendment prior to the March 1, effective date. Although not required, examples of provisions that might be included in the Articles of Organization would be a provision designating managers, if the LLC is to be manager managed, specific restrictions on the authority of members or managers or special requirements with respect to the execution or delivery of documents in order to bind the LLC. There is nothing in the statute that precludes issues of importance from being included in the Articles of Organization. And in some cases, inclusion of key provisions as a form of public record may be advisable, as is routine with corporate practice.

However, other than the name, which must comply with O. The Operating Agreement will generally be a much more detailed instrument. Although the Operating Agreement may be oral or written, in most instances the statutory default rules apply unless overruled in the Articles of Organization or a written Operating Agreement. Parties may well not want the statutory default rules for reasons discussed in more detail below, therefore a written Operating Agreement is of paramount importance. As with limited partnerships, an LLC may issue ownership interests for various quanta of consideration, and discrimination between or within classes of interests is permissible and achievable through the use of special allocations and distribution preferences. The drafters made no effort to define how such contributions are accounted for as such determinations are generally driven by tax and accounting considerations not susceptible to statutory resolution. To be enforceable, an obligation to make capital contributions must be in the Articles of Organization, the Operating Agreement or another writing. An LLC may, but is not required to, issue interest certificates. These will often be largely driven by tax considerations. It should be noted that in the absence of a written Operating Agreement, profits and losses are allocated on a per capita basis. Distributions are addressed separately in the statute in part to highlight what every tax attorney knows that income and cash often have little to do with one another, and are discussed in greater length below. The most important point for the practitioner to note is that distributions are also shared on a per capita basis unless otherwise agreed to in the written operating agreement. Management, Duties and Indemnification. By statutory default, a Georgia LLC is managed by its members unless the Articles of Organization or written Operating Agreement vest management in an manager or managers selected by a majority of members. If, however, a manager or managers are provided for, then such manager functions as agent of the LLC, to the exclusion of members acting solely in their capacity as such. This is yet another example as to why a written operating agreement is essential. In a manager-managed LLC, managers may often function as do a corporate board of directors. If an LLC is instead member-managed, it may more closely resemble a general partnership and some Georgia limited partnerships , where every partner participates in management. In every case, the individuals controlling the business entity will be deemed agents of such entity. Members and managers of an LLC are not liable to the LLC or each other if their management actions are believed in good faith to be in the best interests of the LLC, subject to a prudent person standard of care. A member is not liable to a manager-managed LLC or any other member solely by reason of acting in the capacity as a member. Subject to the provisions of governing documents, an LLC may expand, restrict or eliminate any duties and liabilities of members or managers, except that the LLC may not indemnify members or managers for intentional misconduct or knowing violations of law, or for transactions triggering the receipt of personal benefits in violation of an existing operating agreement. Corporate directors and general partners in limited partnerships are both subject to duties and indemnification provisions similar to those imposed on managing managers and members of an LLC. The thinking of the drafters in this regard was that any attempt to limit the duties of members or managers of an LLC further might be held to be contrary to public policy and would force the courts to develop an ad hoc response through unnecessary litigation. By adopting this well understood standard, the courts should be dissuaded from creating more open ended standards through litigation. In an effort to address some of the concerns that have historically arisen as to matters of title in the real estate area, O. In such case, the limitations on authority of members or managers contained in the Articles of Organization are conclusively presumed in favor of the LLC. The intention here is to create a document analogous to partnership statements often seen under the UPA. Another borrowing from the corporate code are rules to ensure that transactions in which members or managers have interests which conflict with the interests of the LLC are to be approved by disinterested persons. This is another instance where the parties may vary that limitation under their written operating agreement. Before doing so, however, a drafter should consider whether the drafter wishes to abandon the statutory safe harbor that these provisions create, and the well understood principles that derive from the corporate code model, in favor of the uncertainty of individualized agreements. Under the statutory default, most management decisions can be made by a majority vote of the members or managers depending on which group has management authority. Certain other decisions, however, require unanimous approval. In either case, in the absence of a written operating agreement to the

contrary, all such determinations are made on a per capita vote basis. This is yet another example of the critical importance of a written operating agreements for LLCs in order to vary from this rule. General partners, on the other hand, remain personally liable for all partnership debts and obligations. Any limitation on liability of LLC managers and members must be read in conjunction with the provision of the Georgia LLC Act that provides that the Act is not intended to alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those services. The ramifications of this rule are discussed at greater length in Section VI below. An LLC membership interest is composed of two elements:

Chapter 3 : Division of Corporations, State Records and Uniform Commercial Code, NYS Dept. of State

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P. BARBARA K. CEGAVSKE.*

Name Availability Certificate of Publication Domestic Limited Liability Companies Section of the New York State Limited Liability Company Law requires that within days after the effectiveness of the initial articles of organization, a limited liability company LLC must publish in two newspapers a copy of the articles of organization or a notice related to the formation of the LLC. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located, as stated in the articles of organization. After publication, the printer or publisher of each newspaper will provide you with an affidavit of publication. The newspapers must be designated by the county clerk of the county in which the office of the PLLC is located. Name Availability Certificate of Publication Professional Service Limited Liability Companies Section of the New York State Limited Liability Company Law requires that within days after the effectiveness of the initial articles of organization, a professional service limited liability company PLLC must publish in two newspapers a copy of the articles of organization or a notice related to the formation of the PLLC. The newspapers must be designated by the county clerk of the county in which the office of the PLLC is located, as stated in the articles of organization. Attached to the Application for Authority must be a Certificate of Existence from the official who files and maintains limited liability company records in the jurisdiction of the limited liability company. This official is generally the Secretary of State, and many jurisdictions refer to the Certificate of Existence as a Certificate of Good Standing. The Certificate of Existence must be dated within one year. The New York Department of State does not give opinions on what activities constitute doing business in New York State for qualification purposes. An Introduction to Qualification. Generally, the name of the entity may not include a word or phrase restricted by another statute unless one has complied with the restriction. Certain words and phrases also require the consent or approval from another state agency prior to filing the document with the Division of Corporations. The New York Department of State does not give opinions as to what activities constitute doing business in New York State for qualification purposes. An Introduction to Qualification for further clarification. Name Availability Certificate of Publication Foreign Limited Liability Companies Section of the New York State Limited Liability Company Law requires that within days after the filing of the application for authority, a foreign limited liability company LLC must publish in two newspapers a copy of the application for authority or a notice related to the qualification of the LLC. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located, as stated in the application for authority. The newspapers must be designated by the county clerk of the county in which the office of the PLLC is located, as stated in the application for authority. The Articles of Organization may only be amended to amend or add such provisions that may be lawfully contained in the initial Articles of Organization i. The Application for Authority may only be amended to amend or add such provisions that may be lawfully contained in its Application for Authority i. Fillable Certificate of Amendment Form Certificate of Change Domestic Limited Liability Companies A domestic limited liability company may change its Articles of Organization from time to time to 1 change the name and address of its designated address for the New York Secretary of State to mail service of process, 2 change its county location or 3 make, revoke or change the designation of a registered agent by filing a Certificate of Change pursuant to Section A of the New York State Limited Liability Company Law. Fillable Certificate of Change Form Certificate of Change Foreign Limited Liability Companies A foreign limited liability company may change its Application for Authority from time to time to 1 change the name and address of its designated address for the New York Secretary of State to mail service of process, 2 change its county location or 3 make, revoke or change the designation of a registered agent by filing a Certificate of Change pursuant to Section A of the New York State Limited Liability Company Law. The addressee for service of process is required to provide the limited liability company with a day notice after which the addressee may file a Certificate of Resignation for Receipt of Process. Fillable Certificate of Resignation for Receipt of Process Form Certificate of Correction Domestic

Limited Liability Companies Any certificate or other instrument may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution, including the deletion of any matter not permitted to be stated by filing a Certificate of Correction pursuant to Section of the New York State Limited Liability Company Law. Certificate of Correction Form Certificate of Correction Foreign Limited Liability Companies Any certificate or other instrument may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution, including the deletion of any matter not permitted to be stated by filing a Certificate of Correction pursuant to Section of the New York State Limited Liability Company Law. Certificate of Correction Form Articles of Dissolution Domestic Limited Liability Companies Within 90 days following the dissolution and the commencement of winding up the limited liability company, or at any other time that there are no members, a domestic limited liability company shall file articles of dissolution pursuant to Section of the New York State Limited Liability Company Law. Fillable Articles of Dissolution Form Certificate of Surrender of Authority Foreign Limited Liability Companies A foreign authorized limited liability company which will remain in existence in its home state may surrender its authority to conduct business in New York State. The authority of the foreign limited liability company shall terminate upon the filing of a Certificate of Surrender of Authority pursuant to Section of the New York State Limited Liability Company Law. Fillable Certificate of Surrender of Authority Form Certificate of Termination of Existence Foreign Limited Liability Companies A foreign authorized limited liability company that has been dissolved, merged out of existence or had its authority to conduct its business terminated or canceled in its jurisdiction of organization, shall file a Certificate of Termination of Existence with the New York Department of State. Please note a certified copy of the filing is not acceptable. The Certificate of Termination of Existence must be enclosed in a white cover sheet that sets forth the title of the document being submitted and the name and address of the individual to whom the receipt for the filing of the document should be mailed. As defined by Section of the New York State Limited Liability Company Law, "merger" means a procedure in which two or more limited liability companies or other business entities merge into a single limited liability company or other business entity that shall be one of the constituent limited liability companies or other business entities. As defined by Section of the New York State Limited Liability Company Law, "consolidation" means a procedure in which two or more limited liability companies or other business entities consolidate into a single limited liability company or other business entity that shall be a new limited liability company or other business entity to be formed pursuant to the consolidation.

Chapter 4 : Dissolve a Corporation or LLC to End Your Liability | blog.quintoapp.com

A limited liability company, or LLC, is an independent legal entity that will continue to exist, regardless of the status of its owners, unless officially dissolved. In Nevada, the managers of an LLC can file articles of dissolution with the state by visiting the Secretary of State's website.

Chapter 5 : How to Dissolve an LLC in Delaware | [LegalZoom Legal Info](http://LegalZoom.com)

Closing your limited liability company (LLC) can be an emotional and stressful time. You have a lot to get done, and properly dissolving your LLC in the state(s) where it is registered and formalizing a "dissolution agreement" between the owners of the LLC are among the most important.

Chapter 6 : Oman Law Blog: Dissolution and Liquidation of an LLC

Closing your Delaware limited liability company (LLC) will involve a variety of tasks. Among the most important are what is known as dissolving and winding up the business. Your LLC is registered with the State of Delaware. Officially ending its existence as a state-registered business entity, and.

Chapter 7 : How to Dissolve an LLC in Delaware | blog.quintoapp.com

DOWNLOAD PDF DISSOLVING A LIMITED LIABILITY COMPANY.

A Delaware limited liability company, or LLC, that wishes to close down and dissolve its registration with the state should refer to the Delaware Limited Liability Company Act's section on dissolution. The law authorizes an LLC to wind up its affairs upon the vote of two-thirds of the membership by.

Chapter 8 : TITLE 6 - CHAPTER LIMITED LIABILITY COMPANY ACT - Subchapter VIII. Dissolution

Upon dissolution of a limited liability company under items 1 or 3, a Certificate of Dissolution (CSCL/CD) shall be filed. A tax clearance must be requested from the Michigan Department of Treasury within 60 days of filing the dissolution.

Chapter 9 : How to Dissolve a Limited Liability Company ("LLC") in Nevada | Jay Young

The term "limited liability company" has been confusing to many, lawyers and lay people alike, because it triggers two distinct mental associations, (1) with the limited partnership, and (2) with a company or corporation.