
Judiciary Committee

HB 2657

Title: An act relating to the dissolution of limited liability companies.

Brief Description: Addressing the dissolution of limited liability companies.

Sponsors: Representative Pedersen.

Brief Summary of Bill

- Creates a certificate of dissolution for limited liability companies to provide notice of dissolution.
- Provides that neither the filing of a certificate of dissolution or certificate of cancellation eliminates a cause of action by or against a limited liability company.
- Establishes procedures by which a dissolved limited liability company may dispose of known claims.
- Modifies provisions to address winding up the affairs of a dissolved limited liability company.

Hearing Date: 1/20/10

Staff: Courtney Barnes (786-7194).

Background:

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

Attributes of Corporations, General Partnerships, and LLCs

Corporations are creatures of statutory law and are created only by compliance with prescribed formal procedures. A corporation is managed by directors and officers, but is owned by shareholders who may have very little direct role in management. Generally, ownership shares

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

are transferable, and each shareholder is liable for corporate debts only to the extent of his or her own investment in the corporation. A corporation is treated as a taxable entity.

General partnerships are business entities recognized in common law that require no formal creation and are owned and managed by the same individuals who are each liable for the debts of the partnership. A general partnership is not a taxable entity.

The LLCs were authorized by the Legislature in 1994. An LLC is a non-corporate entity that allows the owners to participate actively in management but provides owners with limited liability. A properly constructed LLC can be a business entity in which the ownership enjoys limited liability like a corporation's shareholders, but the entity itself is not taxed as a corporation.

Dissolution of an LLC

An LLC may be dissolved in a number of ways, including:

- reaching a dissolution date set at the time the LLC was created;
- the occurrence of events specified in the LLC agreement as causing dissolution;
- by mutual consent of all members of the LLC;
- the dissociation of all members through death, removal, or other event;
- judicial action to dissolve the LLC; or
- administrative dissolution by the Office of the Secretary of State (OSOS) for failure of the LLC to pay fees or to complete required reports.

Dissolution does not terminate the existence of the LLC. Instead, it begins a period in which the affairs of the LLC must be wound up. Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution.

Revocation of Voluntary Dissolution

A voluntarily-dissolved LLC may file for reinstatement by filing an application with the OSOS. Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

Winding Up the Affairs of a Dissolved LLC

After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC.

Cancellation of Certificate

After an LLC is dissolved, or if an LLC has been merged with another entity and the new entity is not the LLC, the certificate of formation that created the LLC is canceled.

Cancellation may occur in a number of ways:

- The certificate of formation may authorize a manager or member to file the certificate of cancellation upon dissolution or after a period of winding up the business of the LLC.
- A court may order the filing of a certificate of cancellation.
- In the case of a merger that results in a new entity that is not the LLC, the filing of merger documents must include the filing of a certificate of cancellation.
- In the case of an administrative dissolution of an LLC, there is a five-year period during which the LLC may be reinstated before the OSOS files the certificate of cancellation.
- In the case of a voluntary dissolution of an LLC, there is a 120-day period during which the LLC may be reinstated before the OSOS files the certificate of cancellation.

In a recent decision, *Chadwick Farms Owners Association v. FHC, LLC*, the Washington Supreme Court, construing various LLC statutes, held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under the decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

Summary of Bill:

Certificate of Dissolution

A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. When filed with the OSOS, a certificate of dissolution must be signed by the person who is authorized to wind up the LLC's affairs.

Revocation of Voluntary Dissolution

The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has voluntarily dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLCs dissolved due to the happening of events specified in the LLCs agreement or by written consent of all the LLC's members.

To revoke its voluntary dissolution, an LLC must file a certificate of revocation of dissolution with the OSOS. Procedures are created to address how a revocation of dissolution must be approved by the LLC's managers or members.

The requirement that the OSOS cancel a voluntarily-dissolved LLC's certificate of cancellation if the dissolved LLC does not file an application for reinstatement is removed.

Winding Up the Affairs of a Dissolved LLC

The provisions addressing who may wind up a LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. If the LLC has no managers or members, the legal representative of the last person to have been a member may wind up the activities of the LLC.

For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities.

Disposing of Known Claims

A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of any or all of the known claims against it by giving written notice of its dissolution to the holders of the known claims at any time after the effective date of dissolution. The LLC must state the deadline by which claim holders must deliver written notice of the claim to the dissolved LLC. This deadline must not be less than 120 days from the effective date of the written notice of dissolution.

A known claim against an LLC is barred and the claim is not the liability of the LLC if:

- the holder of the known claim was given written notice of dissolution and did not deliver written notice of the claim to the dissolved LLC; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the known claim within 90 days from the effective date of the rejection notice.

Certificate of Cancellation

An LLC is a separate legal entity. Statutory language that states an LLC will be a separate legal entity until cancellation of the LLC's certificate of formation is removed.

Neither the dissolution of an LLC nor the filing of a certificate of dissolution or certificate of cancellation eliminates any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the filing of the certificate of dissolution. Such an action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its own name.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.