

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 70

(Senator Norman)

Judicial Proceedings

**Corporations – Limited Liability Companies – Member–Trustees –
Establishment**

This bill requires the articles of organization for a limited liability company (LLC) to include the name and address of each member of the LLC. Additionally, if the State Department of Assessments and Taxation (SDAT) declares that the LLC has forfeited the right to do business in the State and the right to use its name, the LLC's members become the LLC's trustees for purposes of liquidation.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The member-trustees of the LLC have full title to all assets of the LLC. The member-trustees must (1) collect and distribute the LLC's assets and apply them to existing debts and obligations, including the costs of liquidation, and (2) distribute the remaining assets among the members.

The member-trustees of the LLC may (1) carry out the contracts of the LLC; (2) sell the assets; (3) sue or be sued in their own names as trustees, or in the name of the LLC; and (4) do all other acts necessary (in accordance with the law and the articles of organization) for proper liquidation and to wind up the affairs of the LLC.

Current Law:

Articles of Organization (LLC)

The articles of organization for an LLC must include (1) the name of the LLC; (2) the address of the principal office and the name and address of the resident agent; and (3) any other provision that is elected for inclusion by the members.

Dissolution and Termination (LLC)

The dissolution of an LLC is a change in the relationship between the members; however, dissolution is not the winding up or termination of the LLC. An LLC is not terminated upon dissolution and continues until it is properly terminated in accordance with the law.

Dissolution of an LLC may occur upon (1) events specified in the articles of organization or operating agreement; (2) unanimous consent of the members; (3) a decree of judicial dissolution; or (4) the LLC having no members for a period of 90 consecutive days.

A circuit court may, upon application by or on behalf of a member, decree the dissolution of an LLC if it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement.

Unless otherwise agreed, the remaining members of an LLC may wind up the affairs of the LLC. A circuit court may, on cause shown after dissolution, wind up the affairs of the LLC upon application of any member.

Upon the winding up and termination of an LLC, the assets must be distributed to the creditors and members of the LLC. The remaining members may also file articles of dissolution with SDAT at any time after dissolution but before termination.

An LLC is terminated on the date SDAT accepts the articles of cancellation or the effective date of the articles of cancellation, whichever is later. However, the LLC continues to exist for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing assets, and doing all other acts for purposes of liquidation and winding up its affairs.

Forfeiture (LLC)

If an LLC fails to timely file its annual report with SDAT, or fails to timely pay taxes or unemployment insurance contributions or reimbursements, SDAT may issue a proclamation declaring that the right of the LLC to do business in the State and to use its name has been forfeited. The forfeiture is effective as of the date of the proclamation.

SDAT must mail the notice within 10 days of the proclamation. However, the rights of the LLC may be reinstated if the LLC files the required report and/or makes all outstanding payments within 60 days of the proclamation's issuance.

Forfeiture (Corporation)

If a corporation fails to timely file its annual report with SDAT, or fails to timely pay taxes or unemployment insurance contributions or reimbursements, SDAT must issue a proclamation declaring that the corporation's charter is repealed, annulled, and forfeited; and that the powers conferred by law on the corporation are inoperative, null, and void. The forfeiture is effective as of the date of the proclamation. SDAT must mail the notice within 10 days of the proclamation. However, the corporation's rights may be reinstated if the corporation files the required report and/or makes all outstanding payments within 60 days of the proclamation's issuance.

Forfeiture proceedings may also be initiated by the Attorney General. Upon SDAT's authorization, the Attorney General may initiate proceedings to determine whether the corporation has abused, misused, or failed to use its powers and franchises in a manner which, in the public interest, would make the forfeiture of its charter proper. A court may direct the corporation to remedy one or more grievances within a set time or declare the charter forfeited and the corporation dissolved. The court may appoint a receiver for the corporation's assets.

When a corporation's charter has been forfeited, and until a court appoints a receiver, the directors of the corporation must manage the corporation's assets for purposes of liquidation. The directors must (1) collect and distribute the corporation's assets and apply them to existing debts and obligations, including the costs of liquidation, and (2) distribute the remaining assets among the stockholders.

The directors may (1) carry out the corporation's contracts; (2) sell the assets; (3) sue or be sued in the name of the corporation; and (4) do all other acts necessary (in accordance with the law and the corporation's charter) for proper liquidation and to wind up the corporation's affairs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Department of Legislative Services

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