

Topic: LLC Termination Statement/NCCUSL Question

Question by: Sarah Steinbeck/Dan Kleinberger

Jurisdiction: Colorado/NCCUSL

Date: 16 August 2010

Jurisdiction	Question(s)	
	<p><b>NCCUSL has a meeting scheduled in late September to continue its work on the harmonization of business entity acts. A question has come up regarding the winding up provisions and whether the current language, which states that the statement of termination may include “any other information the limited liability company determines,” is overly broad. (See below.)</b></p> <p><b>Are you comfortable with the “any other information” language, or would a limitation, such as “any other information related to the termination” be preferable?</b></p>	<b>Current requirements</b>
<b>Manitoba</b>		
<b>Corporations Canada</b>		
<b>Alabama</b>		
<b>Alaska</b>		
<b>Arizona</b>		
<b>Arkansas</b>		
<b>California</b>		
<b>Colorado</b>		<p><b>§ 7-80-802. Statement of dissolution</b> (1) Upon dissolution, the limited liability company shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissolution stating: (a) The domestic entity name of the limited liability company;</p>

		<p>and</p> <p>(b) The principal office address of the limited liability company's principal office.</p> <p>(c) and (d) (Deleted by amendment, L. 2004, p. 1463, § 193, effective July 1, 2004.)</p> <p>(2) A limited liability company is dissolved as provided in section <a href="#">7-80-801</a>.</p> <p>(3) For purposes of sections <a href="#">7-80-405</a> and <a href="#">7-80-803.5</a>, a person who is not a manager or member has notice of the dissolution of a limited liability company on the earlier of:</p> <p>(a) The ninetieth day after the limited liability company's statement of dissolution is on file with the secretary of state; or</p> <p>(b) The date on which such person first has actual knowledge of the dissolution.</p> <p><b>History.</b> L. 2003: Entire part R&amp;RE, p. 2269, § 192, effective July 1, 2004. L. 2004: (1) amended, p. 1463, § 193, effective July 1. L. 2006: (2) amended and (3) added, p. 863, § 34, effective July 1.</p>
<b>Connecticut</b>		
<b>Delaware</b>		
<b>District of Columbia</b>	<p>We certainly need to be careful of “any other information” language in any parts of the corporate statute.</p> <p>The minimum requirement should be to provide information related to dissolution. We do just that by requiring domestic LLCs to disclose the names and addresses of all managers/members, statement of debts and liabilities and distribution of property and assets.</p> <p>We do not allow for LLCs to have any other information other than that we specify. Since LLC Act of 1994 we have not had any problem with our dissolution provision.</p>	<p>In the District of Columbia we require for all domestic LLCs to file articles of dissolution – so, changing “may” to “shall” should be required by NCCUSL – if we are to form LLC we need to be able to dissolve them as well.</p>
<b>Florida</b>	<p>In Florida we would like the language to say something like, “any other information consistent with sections (list appropriate dissolution section #s here)”. This would allow language to be added but not outside of the dissolution subject matter.....not a platform for unrelated or unnecessary verbiage). We could work with either version because neither would affect the filing of the document.</p>	
<b>Georgia</b>		

<b>Hawaii</b>		
<b>Idaho</b>		
<b>Illinois</b>		
<b>Indiana</b>		<p>INDIANA – since 1993 – see below.  <b>IC 23-18-9-7</b>  <b>Articles of dissolution; filing</b>  Sec. 7. At any time after a limited liability company dissolves, the limited liability company may deliver to the secretary of state for filing articles of dissolution setting forth the following:</p> <ol style="list-style-type: none"> <li>(1) The name of the limited liability company.</li> <li>(2) The date of filing of the articles of organization.</li> <li>(3) The address of the principal office of the limited liability company.</li> <li>(4) The date dissolution occurred.</li> <li>(5) Other information the members or managers filing the articles determine.</li> </ol> <p><i>As added by P.L.8-1993, SEC.301.</i></p>
<b>Iowa</b>		
<b>Kansas</b>		
<b>Kentucky</b>		
<b>Louisiana</b>	It seems to unnecessarily complicate the filing office's review of these documents and online filing.	<p>Louisiana statute states the same as Missouri, Any other information which the members or managers filing the certificate determine.</p> <p>Most of our filer's do not include any other provisions either.</p>
<b>Maine</b>		
<b>Maryland</b>		
<b>Massachusetts</b>		
<b>Michigan</b>		
<b>Minnesota</b>		
<b>Mississippi</b>		
<b>Missouri</b>	It seems to unnecessarily complicate the filing office's review of these documents and online filing.	<p>Missouri statute is similar to NY, except that our statute states "any other matters which the members shall determine."</p>
<b>Montana</b>		<p><b>35-8-903. Winding up.</b> (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:</p> <ol style="list-style-type: none"> <li>(a) by the members or managers who have authority under 35-8-304 to manage the limited liability company prior to dissolution; or</li> </ol>

		<p>(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.</p> <p>(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:</p> <ul style="list-style-type: none"> <li>(a) prosecute and defend suits;</li> <li>(b) settle and close the business of the limited liability company;</li> <li>(c) dispose of and transfer the property of the limited liability company;</li> <li>(d) discharge the liabilities of the limited liability company;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>(e) distribute to the members any remaining assets of the limited liability company.</li> </ul> <p>For articles of termination the language is as follows:</p> <p><b>35-8-906. Articles of termination.</b> (1) 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:</p> <ul style="list-style-type: none"> <li>(a) the name of the limited liability company;</li> <li>(b) the reason for filing the articles of termination;</li> <li>(c) the effective date of the articles of termination, which must be a date certain, if they are not to be effective upon the filing;</li> <li>(d) the name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company;</li> <li>(e) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company;</li> <li>(f) the date of the dissolution; and</li> <li>(g) that the company's business has been wound up and the legal existence of the company has been terminated.</li> </ul> <p>(2) 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.</p>
Nebraska		

<p><b>Nevada</b></p>	<p>As for the harmonization, I do not have a problem with the language without the limitation.</p>	<p>Nevada requires the following pursuant to statute. We do not have a provision for “any other information,” but would not reject if other information was included.</p> <p><b>NRS 86.531 Articles of dissolution: Required provisions.</b></p> <p>1. When all debts, liabilities and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, articles of dissolution must be prepared and signed setting forth:</p> <ul style="list-style-type: none"> <li>(a) The name of the limited-liability company;</li> <li>(b) That all debts, obligations and liabilities have been paid and discharged or that adequate provision has been made therefor;</li> <li>(c) That all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and</li> <li>(d) That there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.</li> </ul> <p>2. The articles must be signed by a manager, or if there is no manager by a member, of the company.</p> <p>(Added to NRS by 1991, 1303; A 1995, 2113; 1999, 1616)</p> <p><b>NRS 86.541 Articles of dissolution: Filing; effect of filing.</b></p> <p>1. The signed articles of dissolution must be filed with the Secretary of State. Articles of dissolution are effective upon filing the articles with the Secretary of State or upon a later date specified in the articles, which must not be more than 90 days after the articles are filed.</p> <p>2. Upon the filing of the articles of dissolution or upon a later date specified in the articles, the existence of the company ceases, except for the purpose of suits, other proceedings and appropriate action as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of them, are thereafter trustees for the members and creditors of the dissolved company and as such have authority to distribute any property of the company discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the dissolved</p>
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		company. (Added to NRS by 1991, 1303; A 1995, 2113; <u>1999, 1616; 2001, 1394, 3199; 2005, 2197</u> )
<b>New Hampshire</b>	I would favor tightening the language to “any other information related to the termination”.	This is the language New Hampshire has for LLC cancellation. I would favor tightening the language to “any other information related to the termination”.  <b>304-C:59 Certificate of Cancellation.</b> – After the dissolution of the limited liability company pursuant to RSA 304-C:50, the limited liability company shall file a certificate of cancellation with the secretary of state which shall set forth: I. The name of the limited liability company; II. The reason for filing the certificate of cancellation; III. The effective date (which shall be a date certain) of the certificate of cancellation if it is not to be effective upon the filing; and IV. Any other information the members or managers filing the certificate shall deem proper.
<b>New Jersey</b>		
<b>New Mexico</b>		
<b>New York</b>	[I]t seems to unnecessarily complicate the filing office’s review of these documents and online filing.	In NY Articles of Dissolution may include “any other information the persons filing the articles determine.” Most filers do not include additional information, so this provision hasn’t caused us any problems. However, unless there is some need for this provision, it seems to unnecessarily complicate the filing office’s review of these documents and online filing.
<b>North Carolina</b>	I would suggest using the "related to the termination" language.	North Carolina has Articles of Dissolution, I am assuming this is the same thing filing in the model act. I would suggest using the "related to the termination" language. However, is there a provision to limit the length of time to terminate or is it an indefinite time frame?
<b>North Dakota</b>		
<b>Ohio</b>		
<b>Oklahoma</b>		
<b>Oregon</b>	As to my comfort level of the LLC saying anything they want, in a lot of ways, they do that anyway. I'd prefer a simpler statement, since there's no gain by filing superfluous language with us. My general principle for what	

	the statutes should say about filing is: unless it grants the filer some specific benefit by filing with us, or the public is informed in a necessary way, information should not be deposited with the filing office.	
<b>Pennsylvania</b>		
<b>Rhode Island</b>		
<b>South Carolina</b>		
<b>South Dakota</b>		
<b>Tennessee</b>		
<b>Texas</b>	Limiting language would be preferable. As currently worded in the NCCUSL draft, it may encourage the submission of extraneous and irrelevant information.	Texas law does not include similar language in our current law, but we do not reject documents that include information beyond that required by the statute.
<b>Utah</b>	I don't know why it would be necessary for public documents.	Utah's current law doesn't have anything like this for the filing in our office.
<b>Vermont</b>		
<b>Virginia</b>		In Virginia, LLC articles of cancellation (termination) are not effective until the filing is made (when we issue a certificate). We also require the instrument to include the reason for filing the "termination" instrument, plus a statement that the LLC has completed the winding up of its affairs. Our Code also allows for the inclusion of "other information that the members determine to include therein," but given the prior 2 requirements, we usually don't receive additional information.
<b>Washington</b>	Our office has no objection to the language.	Our LLC law was changed this year and does not include the "any other information" statement.
<b>West Virginia</b>		
<b>Wisconsin</b>		
<b>Wyoming</b>		

Additional comments:

Full text of email:

NCCUSL has a meeting scheduled in late September to continue its work on the harmonization of business entity acts. A question has come up regarding the winding up provisions and whether the current language, which states that the statement of termination may include “any other information the limited liability company determines,” is overly broad. (See below.)

Are you comfortable with the “any other information” language, or would a limitation, such as “any other information related to the termination” be preferable?

Please let me know your preference and if you have any other questions or suggestions related to the harmonization effort.

Thank you!

Sarah

## **SECTION 702. WINDING UP.**

(b) In winding up its activities, a limited liability company:

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(2) may:

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(F) deliver to the [Secretary of State] for filing a statement of termination stating:

(i) the name of the company and that the company is terminated; and

(ii) any other information the limited liability company determines; and

(See [http://www.law.upenn.edu/bl/archives/ulc/hobe/2010am\\_hullca.htm](http://www.law.upenn.edu/bl/archives/ulc/hobe/2010am_hullca.htm) for the full section language.)

Sarah Steinbeck

Senior Legislative and Legal Analyst

Business Division

Colorado Secretary of State

Voice: 303.894.2200 ext. 6211

Email: [sarah.steinbeck@sos.state.co.us](mailto:sarah.steinbeck@sos.state.co.us)

Web site: [www.sos.state.co.us](http://www.sos.state.co.us)