

Topic: Entity Name After Dissolution and Reinstatement

Question by: Sarah Steinbeck on behalf of Dan Kleinberger/NCCUSL

Jurisdiction: Colorado

Date: 19 January 2011

Jurisdiction	Question(s)	
	<p>What happens to an entity name when the entity is voluntarily or administratively dissolved?</p> <ul style="list-style-type: none">a. Is this an administrative action or do your statutes dictate what happens to an entity name after dissolution?b. If you “hold” the name or have a grace period, what is the duration of the period?	<p>Would any problems be created for your office if an entity could petition a court to reinstate after the statutory period for reinstatement had ended? (In other words, if an entity can only reinstate within 5 years of dissolution, would it cause any problems if an entity who had been dissolved for 6 years (or more) could petition a court to be reinstated and then bring the court order, along with any other paperwork/fees that you would require for reinstatement, to your office and be reinstated?</p>
Manitoba	In Manitoba, by policy we “hold” the name for 2 years after dissolution	We have no time limit on reinstatement (or “revival”, as we call it).
Corporations Canada	Whether a corporation is dissolved voluntarily or administratively, its name is protected from confusion with the name of a corporation applying for federal corporation for two years from the date of dissolution, pursuant to regulations under the statutes.	The federal legislation does not provide for a statutory period of reinstatement. The name is reserved for two years only. Once the two-year period has ended, Corporations Canada is willing to grant a name that may be confusing with the name of the dissolved corporation. After the two-year period, the reinstating corporation must apply again for a corporate name, including the name that it held prior to dissolution.
Alabama		
Alaska		
Arizona	Voluntarily--immediately available...administratively six months and then available <ul style="list-style-type: none">a. AZ statutes address the six month period for admin diss, but are silent on voluntary....thus, our policy is it is available immediatelyb. Six months	No problem for us to accept a court order only potential issued would be if the name was taken...if the entity is reinstating they would need to file an amendment to change the name of the entity since it was taken by another entity

Arkansas		
California		
Colorado	In a voluntary dissolution, the name becomes available immediately. Under administrative dissolution/delinquency, the entity loses its name after 400 days. In both cases, the words "Dissovled" plus the month, date, and year of dissolution are appended to the entity's name. (Same for delinquency, but "Delinquent" replaces "Dissolved.") a. Statutory b. 400 days	Colorado does not have a time limit on reinstatement.
Connecticut		
Delaware		
District of Columbia	Voluntary dissolution – name is available right away; Administrative dissolution – name is available the first business day of the very next year.	Entity can reinstate anytime. If name is not available another name should be selected. We have never had the case where court would grant the name of the company that has been taken by another entity.
Florida	Voluntary Dissolution: the name is held for 120 days. Administrative Dissolution: the name is held for one year. The administratively dissolved entity can submit an affidavit to release the name during the one year period by stating they do not intend to reinstate the corporation. The person who wants to use the name must have a copy of the affidavit with their new set of articles. a. Statutes provide that the name must be held and for what time period. b. 120 days	An administratively dissolved entity can reinstate for any period of time by paying back fees. If the entity's name has been assumed by another entity, it must change its name simultaneously when reinstating. We have never had a court order to reinstate an entity when the name has been assumed by another entity.
Georgia		
Hawaii	In Hawaii, when an entity is dissolved/terminated voluntarily or involuntarily, the name becomes available for registration. The involuntarily dissolved/terminated entity has two years to reinstate, if, the name is not available when filing for reinstatement, the entity may file a name change amendment, Hawaii corporate statute below - §414-403 Reinstatement following administrative dissolution. (a) A corporation administratively dissolved under section 414-402 may apply to the department director	

	<p>for reinstatement within two years after the effective date of dissolution. The application shall:</p> <p>(1) Recite the name of the corporation and the effective date of its administrative dissolution;</p> <p>(2) Contain all reports due and unfiled;</p> <p>(3) Contain the payment of all delinquent fees and penalties; and</p> <p>(4) Contain a certificate from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.</p> <p>(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively dissolved corporation pursuant to the amendment provisions of this chapter.</p> <p>(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. [L 2000, c 244, pt of §1; am L 2001, c 129, §42; am L 2006, c 235, §3; am L 2009, c 23, §2]</p>	
Idaho		
Illinois	<p>Domestic corps. that have been administratively dissolved, names are reserved from use by any other corp. for three years.</p> <p>Corps. That have been voluntarily dissolved, names are available immediately.</p> <p>Limited Liability Companies that are administratively or voluntarily dissolved, names are available immediately.</p> <p>a. Our Business Corp. Act statute dictates course of action. 805 ILCS 5/12.43. (805 ILCS 5/12.43)</p>	<p>There is no statutory period of limitations for reinstatements. It was repealed some years ago.</p>

	<p>Sec. 12.43. Administrative dissolution; corporate name. The Secretary of State shall not allow another corporation to use the name of a domestic corporation that has been administratively dissolved until 3 years have elapsed following the date of issuance of the certificate of dissolution. If the domestic corporation that has been administratively dissolved is reinstated within 3 years after the date of issuance of the certificate of dissolution, the domestic corporation shall continue under its previous name without impacting its continuous legal status, unless the corporation petitions to change its name upon reinstatement. (Source: P.A. 95507, eff. 82807.) b. See above.</p>	
Indiana	By administrative action the name is held for 120 days after dissolution or revocation.	Indiana does not have a statutory limit for the reinstatement period.
Iowa		
Kansas	In Kansas the name is available upon dissolution. If an entity wishes to reinstate they are open to do so at any time, but if the name has been taken by another entity they have to choose a new name.	
Kentucky		
Louisiana	In Louisiana an entity's name becomes available upon voluntary dissolution. If revoked the name is held for 3 years before it becomes available. Corporations can reinstate at any time but must file a name change amendment if their name is no longer available.	
Maine	Pursuant to Maine's statute, the name of a corporation remains in the Secretary of State's records of corporate names and is protected for a period of 3 years following administrative dissolution.	It certainly would be problematic if a court order required us to reinstate a corporation with the original corporate name after the 3 years following the administrative dissolution if the name had been granted to a new entity. Currently in Maine, after the 3 years have passed and the corporation wants to reinstate, they are required to change the legal name if the name is no longer available (already granted to a new entity) in order to reinstate.
Maryland		
Massachusetts	In Massachusetts, names are protected by using them. Incorporation or registration is merely evidence of use. Under our old corporate statute G.L c 156B, names were protected for a period of 3 years after dissolution. Since	

	<p>enactment of G.L. C 156D, names are immediately available after dissolution or revocation. If the dissolution or revocation was involuntary for failure to file, we generally hold the name for a period of year. . If an entity reinstates after the year, they would be required to do so under a new name, unless they had a court determination of their right to the name.</p> <p>There is no time limit within which an entity which has been administratively dissolved or revoked may reinstate. We have not had any problems with this to date.</p> <p>Under G.L. c156B corporations which were voluntarily and involuntarily dissolved could revive at any time. There were numerous problems with that provision because unrelated parties would revive corporations in an attempt to gain title to property etc.</p>	
Michigan	<p>In Michigan once an entity is dissolved, the name is available.</p> <p>However, if a domestic corporation fails to file any annual report for a period of 2 years from the date on which the annual report was due we send a notice of delinquency 90 days after the due date of the report and then a notice of pending dissolution not later than 90 days before the 2-year period has expired. With foreign corporations we send out the notice after one year of failing to file. The same holds for LLCs.</p>	<p>A corporation can renew its existence any time after dissolution; however, they may not be able to renew under the same name if it is no longer available.</p> <p>If an LLC fails to file its annual statements and is not in good standing, the LLC may file a certificate of restoration of good standing. If the name is not available when the certificate is filed the LLC will have to select a new name.</p>
Minnesota	<p>In Minnesota, when an entity voluntarily dissolves or terminates, their name becomes available for registration by others upon the dissolution or termination. If an entity is administratively dissolved or terminated for failure to file their annual renewal, we hold the name for one year. If an entity is administratively dissolved or terminated for any other reason, we do not hold their name for one year, and the name becomes available for registration. The one year hold for administrative dissolutions or terminations for failure to file the annual renewal is provided for in Minnesota Statutes, section 5.35, which you can see at:</p> <p>https://www.revisor.mn.gov/statutes/?id=5.35</p>	<p>In Minnesota, there is no statutory period for reinstatement, so we would not face this question. Reinstatement may occur at any time after administrative dissolution or termination. Depending upon whether the type of entity, they may not be able to reinstate under the original name if someone else has registered the name when it became available.</p>
Mississippi		

Missouri	<p>a. Statutes dictate</p> <p>b. There is no hold for voluntary dissolutions. For administrative dissolutions, there is no hold for LLCs; general business is held for 1 year; non profits are held for two years.</p>	<p>We would have a problem only if the name has already been issued to another entity. To my staff's knowledge this has not happened here, but we would try to work with the second entity to see if they would choose another name. If not, we would follow the court order to reinstate the first entity and then let the two entities battle it out in court.</p>
Montana	<p>Domestic corporations both profit and nonprofit have 120 days to revoke the voluntary dissolution of the entity, therefore, we would have to hold the name for 120 days.</p> <p>When an entity is involuntarily dissolved the name becomes available immediately after involuntary dissolution.</p> <p>If an entity reinstates in Montana and their previous name is no longer available the entity must state a new entity name on the reinstatement application which they will then use.</p>	<p>If we are instructed by court order to reinstate after our statutory 5 years we would reinstate the registration as instructed.</p>
Nebraska		
Nevada	<p>In Nevada, an entity is in default status for one year after its due date and then goes into "revoked" status if the annual list of officers and associated payment are not submitted by that one year anniversary. Once revoked, the name is available for use by any other person creating an entity. If that company wants to reinstate and someone has taken that name, they may do so by submitting a modified name resolution or by obtaining and submitting consent for use from the new holder. This is all in statute.</p>	<p>There has been only one time in my 13+ years that the court has ordered a name to be changed back (where we were ordered to change it). Both entities were parties and were part of the order (our Deputy AG actually drafted the order) and the order was for the entities to file the proper correction docs. The dispute is not really with the entity and the Secretary of State, but between the entity that holds the name and the one that used to hold the name. It is my understanding that there have been other rulings that have ordered the entities to file correction or amendatory docs to correct the record, but the SoS has not been a party to those actions. In the event that the court does order an action (we have had a couple non-name issues) the requisite forms and fees must be filed and the court order becomes part of the record.</p> <p>Nevada also has a revival statute that allows entities that have been revoked for 5 years (permanently revoked) to revive their entity. Again, if the name is not available, they must file a modified name resolution or get name consent from the new holder (and pay all back fees and penalties.)</p> <p>The Secretary of State does not confer the right to use a name or</p>

		otherwise determine who may have rights to a specific name. If the name is available on the records of the SoS, then we will file. Any dispute over the name, or any other contents of the articles or associated docs, are for the private attorneys and courts to determine. We keep the ministerial nature of the office intact.
New Hampshire	New Hampshire protects the name for administratively dissolved entities for a period of 120 days and for voluntarily dissolved corporations the name is protected for 120 days as well. Entities can reinstate any time after using the means provided for by statute, depending on how long it has been since dissolution (< 3 years or > 3 years). If the name is no longer available an amendment to change the name must be included with the reinstatement paperwork. For a voluntary dissolution, in NH, the entity ceases its corporate existence except for the purpose of winding up business and/or liquidating assets.	
New Jersey		
New Mexico		
New York	In NY an entity's name becomes available upon voluntary dissolution. If administratively dissolved for failure to pay taxes, the name is held for 3 months.	Corporations can reinstate at any time but must file a name amendment if their name is no longer available.
North Carolina	<p>When an entity voluntarily dissolves they have 120 days in which to reinstate and keep their same name. They would have to file new articles after the 120 day period.</p> <p>The name is held for 5 years in the case of an administrative dissolution. IF they want to reinstate after the five year period, and the name is not available, they will need to choose a different name. NCGS 55-14-22(a1).</p> <ul style="list-style-type: none"> a. Statute: (NCGS 55D-21(d)) b. 120 days or 5 years depending upon the type of dissolution. 	No, this would not create a problem for the Secretary of State's Office. However, if the name is not available of record the entity would have to choose a different name.
North Dakota	North Dakota's statute is very specific that the entity forfeits the rights to the name upon dissolution. If reinstatement is sought and the entity's former name is no longer available, it must seek consent to use of the name or adopt an alternate name upon reinstatement.	
Ohio	Ohio law provides for a one year old of business names following the cancellation of a business. See R.C.	Most entities have no statutory period for reinstatement. If a corporation reinstates over a year after the cancellation, then

	<p>1701.922(A) (http://codes.ohio.gov/orc/1701.922) and R.C. 1702.60(A) (http://codes.ohio.gov/orc/1702.60). The code does not address the name availability upon voluntary dissolution, and absent a specific provision requiring our office to hold the name for a certain time frame, we find that these names are available immediately upon the dissolution. Names are held for one year after a cancellation.</p>	<p>they may continue to use their corporate name if it is still available. If the name is not available, they may obtain consent from the new entity or they may file an amendment to change the corporate name when the reinstatement is filed.</p> <p>In Ohio a limited liability partnership may only reinstate within two years after the date of cancellation. This situation has not occurred, however, if a court permitted a limited liability partnership to reinstate after 3 years (or more), this may only create a problem if the name is no longer available and we would likely require consent or an amendment to be filed with the reinstatement.</p>
Oklahoma		
Oregon	<p>When an entity is dissolved, the name becomes available immediately upon dissolution. Voluntarily dissolved entities cannot reinstate, but they can withdraw the filing within a year, if they say they submitted it erroneously. However, if the name has been taken in the meantime, they will have to amend the name.</p> <p>Administratively dissolved entities can be reinstated within 5 years of the date of dissolution. This is a statutory provision. A court order could be obtained to reinstate, but there is no statutory process for it as such. It's just that courts can tell us to do practically anything and we'll do it.</p> <p>We did get an exemption for nonprofits, which can be reinstated beyond the limit, if they can show continuous existence during the lapse and have good cause for the lapse. This has been vital for many dissolved entities.</p>	<p>If there were a court order process laid out in statute, it would not be a problem for us, but it may be a mess if another entity had filed the name in between times. The court would have to take that into consideration. In practice, it appears that most entities will simply file a new name and merge the old into the new as part of the "winding up of affairs."</p>
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas	<p>Name becomes available on dissolution.</p> <p>a. 1960 opinion of the AG opined that name was available upon forfeiture.</p>	<p>This happens infrequently but no problems arise for SOS so long as the entity's name is available (or is changed if not available) and the entity satisfies all tax obligations.</p>

<p>Utah</p>	<p>Our name policy is in statute. A corporation or LLC can reinstate up to two years after administrative dissolution. The name is held for those two years. The statute has a vague reference to the name after reinstatement, so we might be able to compel them to use another name....I'll let you know if it ever comes up.</p> <p>Voluntary dissolution is another matter - statute says 120 days to rescind. We would be a little more hard-hearted in that case. They chose to give up the name..</p>	<p>If we received a court order after that period (which has not happened in my years here) we would have to work with any entity that took the name after the "hold" period and see what we could do. I, personally, would ask the court how to administer the statute if they ordered a reinstatement after the time frame.</p>
<p>Vermont</p>	<p>Vermont will hold a name for 5 years after involuntary dissolution</p>	
<p>Virginia</p>	<p>In Virginia, we have a 2-step process when the wind up is voluntary . First, dissolution, and then termination/cancellation. Winding up occurs during the dissolution phase. After the affairs are wound up, the entity voluntarily terminates or cancels, and ceases to exist. (Termination for corporations. Cancellation for all other entity types.)</p> <p>In the event of an involuntary termination, our corporate code provides that the corporation's property and affairs pass automatically to the directors as trustees in liquidation. See http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-753. In an involuntary cancellation by a LLC, the managers or members become the liquidating trustees. See http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-1050.3.</p> <p>When an entity is "dissolved" (we use "terminated" or "canceled"), the entity's name becomes available for use by another entity. This is by statute, as name distinguishability is determined from the names of active (non-dissolved) entities, plus name reservations. Arguably, the entity had plenty of time to avoid dissolution. Involuntary dissolution for non-payment of the annual registration fee occurs 120 days after the due date, and the entity receives notice of the assessment about 2.5 months before the due date. An impending notice of dissolution is also sent to the entity if it fails to pay by the due date.</p> <p>Reinstatement can occur within 5 years of voluntary or</p>	<p>Our 5-year reinstatement window is by statute. No court has the authority to order reinstatement after 5 years.</p>

	involuntary dissolution. If the entity's name is no longer available, it must adopt a new name at reinstatement. If it has lost its name, adding "of Virginia" to the old name will often make it distinguishable. The entity might also be able to file a fictitious name certificate to effectively use its old name after reinstatement.	
Washington	Washington's statute is very specific that the entity forfeits the rights to the name upon dissolution. If reinstatement is sought and the entity's former name is no longer available, it must seek consent to use of the name or adopt an alternate name upon reinstatement.	
West Virginia		
Wisconsin		
Wyoming		

Additional comments:

Full text of email:

Hi everyone! I have a few quick questions.

1. What happens to an entity name when the entity is voluntarily or administratively dissolved?
(In Colorado, the entity name appended with "Dissolved Month day, yyyy" after a voluntary dissolution, but the name is "held" for 400 days after the entity becomes delinquent (Colorado's version of administrative dissolution).)
 - a. Is this an administrative action or do your statutes dictate what happens to an entity name after dissolution?
 - b. If you "hold" the name or have a grace period, what is the duration of the period?
2. Would any problems be created for your office if an entity could petition a court to reinstate after the statutory period for reinstatement had ended? (In other words, if an entity can only reinstate within 5 years of dissolution, would it cause any problems if an entity who had been dissolved for 6 years (or more) could petition a court to be reinstated and then bring the court order, along with any other paperwork/fees that you would require for reinstatement, to your office and be reinstated?)

Thanks!

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