

Topic: Reversal of Termination of Entity?

Question by: Tung Chan

Jurisdiction: Hawaii

Date: October 24, 2013

Jurisdiction	Question(s)
	Do any jurisdictions allow reversal of terminations and if so, do you have clear statutory language and if you don't have language, how do you deal with it?
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	<p>In Arizona, our statutes do not specifically allow for any kind of reversal of a termination. The statute does say the existence of the LLC ceases, but they can still wind up their affairs (A.R.S. Section 29-784.)</p> <p>I recall only one situation where we allowed this - an attorney was involved, and it wasn't actually a dispute among members, but was really a mistake by one of the members. I think I obtained an affidavit from the person who submitted the articles of termination setting out the fact that the LLC was terminated by mistake, just to document our actions in reinstating it.</p> <p>I don't think I would allow a termination to be un-done if it was parties fighting with each other, and the justification for that is simply that our statutes do not provide for any type of reinstatement after voluntary termination, contrasted with reinstatement after an administrative dissolution. After voluntary termination, the LLC is supposed to do nothing except wind up its business, meaning, it can't vote to reinstate itself. In contrast, there is a corp statute that allows a revocation of a dissolution within a specified time frame. I believe I would tell someone requesting re-activation that they would need a court order directing that it be reactivated, any dispute must be settled in court, etc.</p>
Arkansas	
California	
Colorado	
Connecticut	
Delaware	

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District of Columbia	<p>In the District of Columbia we have revocation of dissolution filings for nonprofit and for-profit corporations. Dissolution can be reversed within 120 days of its filing by filing this revocation form.</p> <p>As to other entity types such as LLCs we have required for entities to get court order before we can do the reversal.</p> <p>Without explicit statutory authority dissolution will generally be the final act and absence the court order we will not reverse it.</p>
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	<p>IN is similar to District of Columbia. Indiana code provides for a revocation of dissolution for nonprofit corporations, for-profit corporation and LLCs. The dissolution may be revoked within 120 days of its filing. Indiana code does not address the issue past the 120 days. However, if a court order were obtained, the SOS would follow it.</p>
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	<p>In Massachusetts, Domestic Profit, Professional, Benefit, and Professional Benefit corporations may file a Revocation of Dissolution within 120 days of filing the Voluntary Dissolution</p> <p>All other entity types would require a court order rendering their dissolution/cancellation void with no further force or effect.</p> <p>Without explicit statutory authority the dissolution will generally be the final act and absence the court order we cannot reverse it.</p>
Michigan	See Additional Comments Below

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Minnesota	In Minnesota, termination of an entity by whatever voluntary means if the person making the terminating filings is unauthorized is a felony punishable similar to perjury, and can also be overturned by a court. There is no administrative or non-judicial remedy available, however; there is a provision that if the person filing accidentally filed on the wrong entity (for anything) that they can redirect the filing to the appropriate record within 60 days of making the filing, see Minnesota Statutes, section 5.16, subdivision 1. However, that would not necessarily apply in the case described here.
Mississippi	
Missouri	Missouri is also like as Massachusetts.
Montana	See additional comments below.
Nebraska	
Nevada	<p>In Nevada, there are several ways to accomplish such reversal. Depending on the entity type, a dissolved or otherwise terminated entity may revive its existence by filing revival documents that have specific authorization from the rightful board of directors or its equivalent.</p> <p>Additionally, if there was an error in fact or procedure, an entity may file a certificate of correction indicating the error and correcting the record. This was championed by our state Bar Association as a way to correct certain filing errors without going through the entire amendment process or going to court for an order allowing reinstatement.</p> <p>The final way if a revival is not allowed and a certificate of correction is not appropriate, is by court order. This is so rare that I do not recall the last time it happened.</p>
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	North Carolina is similar to Massachusetts.
North Dakota	
Ohio	
Oklahoma	

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Oregon	Like Indiana, Oregon allows for revocation of a voluntary dissolution (what I think you mean in our terms) within 120 days of filing. We also have another provision that allows any document submitted to our office to be withdrawn as if it had not been filed within a year of filing, but it has to be requested by an authorized representative of the entity. After a year, you're stuck, unless you can get a court order, which of course trumps all.
Pennsylvania	
Rhode Island	Rhode Island is exactly the same as Massachusetts!!
South Carolina	
South Dakota	
Tennessee	
Texas	See additional comments below.
Utah	Utah is like Montana
Vermont	
Virginia	Our business entity acts allow for an entity, including a terminated entity, to petition the Commission at any time for an order to correct its records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the business entity. See, for example, subsection C of Section 13.1-614 of the Code of Virginia.
Washington	Washington state is also the same as RI and MA for Corporations and LLCs.
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

MONTANA:

Montana code does allow a termination to be reversed, but only in very specific circumstances.

35-8-901. Dissolution.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

Basically, if the business of the LLC has been wound up and the date is filed, the company may not roll back its termination.

Our code is pretty specific for LLCs.

Corporations have a little more leeway, a dissolution may be reversed within 120 days of the effective date:

35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933(1)(a)(iv) or (1)(b).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Sorry for the long post, but you did ask for specifics.

TEXAS:

Texas law provides that a filing entity may reinstate during the three year period following termination.

Sec. 11.201. CONDITIONS FOR REINSTATEMENT. (a) A terminated entity may be reinstated under this subchapter if:

- (1) the termination was by mistake or inadvertent;
 - (2) the termination occurred without the approval of the entity's governing persons when their approval is required by the title of this code governing the terminated entity;
 - (3) the process of winding up before termination had not been completed by the entity; or
 - (4) the legal existence of the entity is necessary to:
 - (A) convey or assign property;
 - (B) settle or release a claim or liability;
 - (C) take an action; or
 - (D) sign an instrument or agreement.
- (b) A terminated entity may not be reinstated under this section if the termination occurred as a result of:
- (1) an order of a court or the secretary of state;
 - (2) an event requiring winding up that is specified in the title of this code governing the terminated entity, if that title prohibits reinstatement; or
 - (3) forfeiture under the Tax Code.

Sec. 11.202. PROCEDURES FOR REINSTATEMENT. (a) To the extent applicable, a terminated entity, to be reinstated, must complete the requirements of this section not later than the third anniversary of the date the termination of the terminated entity's existence took effect.

(b) The owners, members, governing persons, or other persons must approve the reinstatement of the domestic entity in the manner provided by the title of this code governing the domestic entity.

(c) After approval of the reinstatement of a filing entity that was terminated, and not later than the third anniversary of the date of the filing of the entity's certificate of termination, the filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

(d) A certificate of reinstatement filed under Subsection (c) must contain:

(1) the name of the filing entity;

(2) the filing number the filing officer assigned to the entity;

(3) the effective date of the entity's termination;

(4) a statement that the reinstatement of the filing entity has been approved in the manner required by this code; and

(5) the name of the entity's registered agent and the address of the entity's registered office.

(e) A tax clearance letter from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated must be filed with the certificate of reinstatement if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation.

MICHIGAN:

The Michigan Business Corporation Act provides very specific instances in which dissolution can be revoked (under vary narrow circumstances) or renewed.

450.1811 Revocation of dissolution proceedings; certificate of revocations.

Sec. 811.

(1) Dissolution proceedings commenced pursuant to section 488 or 804 may be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, by filing a certificate of revocation executed, in person or by proxy, by all the shareholders, stating that revocation is effective pursuant to this section and that all the shareholders of the corporation have executed the certificate in person or by proxy.

(2) Dissolution proceedings commenced pursuant to section 804 may also be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board of directors shall adopt a resolution revoking the dissolution. The proposed revocation shall be submitted for approval at a meeting of shareholders. The shareholders shall be given the same notice of the meeting and the revocation shall be approved by the same vote as required by section 804 for the approval of dissolution.

(b) A certificate of revocation, stating that dissolution is revoked pursuant to this section, and giving the information required by section 804(7), shall be executed and filed on behalf of the corporation.

450.1815 Renewal of corporate existence; manner.

Sec. 815.

A corporation whose term has expired may renew its corporate existence, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board shall adopt a resolution that the corporate existence be renewed. The proposed renewal shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence.

(b) At the meeting a vote of shareholders entitled to vote on the renewal shall be taken on the proposed renewal which shall be adopted upon receiving the affirmative vote of holders of a majority of the outstanding shares.

(c) If renewal of the corporate existence is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth all of the following:

(i) The name of the corporation.

(ii) The date and place of the meeting of shareholders approving the renewal of existence.(iii) A statement that renewal was approved by the requisite vote of directors and shareholders.

(iv) The duration of the corporation if other than perpetual.

The Michigan Business Corporation Act also allows for the correction of documents in certain instances:

450.1133 Correction of document relating to domestic or foreign corporation; signing and filing of certificate of correction; contents of certificate; effective date of corrected document.

Sec. 133.

If a document relating to a domestic or foreign corporation filed with the administrator under this act was at the time of filing an inaccurate record of the corporation action referred to in the document, or was defectively or erroneously executed, or the document was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the corporation. A certificate, entitled “certificate of correction of ... (correct title of document and name of corporation)” shall be signed as provided in this act with respect to the document being corrected and filed with the administrator. The certificate shall set forth the name of the corporation, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution. The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was, as a result of the inaccurate portion of the document, adversely affected by the correction.

The Michigan Limited Liability Company Act does not provide for the revocation of dissolution; however, it does allow for the correction of filed documents in certain instances.

450.4106 Documents; inaccurate record or defective execution; certificate of correction; filing; signature; contents; effective date of corrected document.

Sec. 106.

- (1) If a document relating to a domestic or foreign limited liability company filed with the administrator under this act was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, or was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the company.
- (2) The certificate shall be signed as provided by this act in the same manner as required for the document being corrected.
- (3) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.
- (4) The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was as a result of the inaccurate portion of the document adversely affected by the correction.

Full text of email:

Aloha everyone,

We have a knotty issue regarding reversing a termination. Under Hawaii Law, most filings are self-certifying and we are a ministerial registry so we have to, by law, accept the filing after self-certification.

But reversing a termination of an entity is different. There is no language technically permitting a reversal of a termination and definitely no language saying that all you have to do is self-certify that a termination was wrongly made and therefore, it should be reversed.

In my years as administrator, I have seen over and over again that these termination/reversal matters usually have to do with parties who have long histories suing each other. It is the exact kind of thing our registry would not review in any substantive way. So if we allow reversal of terminations just by self-certifications, it could go back and forth and back and forth, making our registry an inappropriate pawn and creating the exact kind of confusion our registry is meant to avoid.

Sorry this is so long, but basically, do any jurisdictions allow reversal of terminations and if so, do you have clear statutory language and if you don't have language, how do you deal with it?

Thanks so much!

Tung

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