

Article 6.

Dissolution.

**§ 57D-6-01. Dissolution.**

An LLC is dissolved upon the occurrence of any of the following:

- (1) An event causing the LLC to dissolve under the operating agreement.
- (2) If the LLC never had a member, as approved by the organizers under G.S. 57D-2-20(c).
- (3) If the LLC ever had a member, the 90th day after the day on which the LLC ceases to have any members, unless within that 90-day period one or more persons are admitted as a member or members by the person, including the former member, owning or otherwise controlling the ownership interest of the last member.
- (4) Entry of a decree of judicial dissolution under G.S. 57D-6-05.
- (5) Subject to G.S. 57D-6-06(c), the filing by the Secretary of State of a certificate of dissolution under G.S. 57D-6-06. (2013-157, s. 2.)

**§ 57D-6-02. Grounds for judicial dissolution.**

The superior court may dissolve an LLC in a proceeding brought by either of the following:

- (1) The Attorney General, if it is established that (i) the LLC obtained its articles of organization through fraud or (ii) the LLC continued to exceed or abuse the authority conferred on it by law 20 or more days after the date the Attorney General delivered to the LLC written notice of the LLC's unauthorized acts.
- (2) A member, if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member. (2013-157, s. 2.)

**§ 57D-6-03. Procedure for judicial dissolution.**

(a) A proceeding under G.S. 57D-6-02 to dissolve an LLC is to be brought against the LLC. The party bringing the dissolution proceeding may not join an interest owner or company official as a party to the proceeding unless and to the extent relief is sought against the interest owner or company official for that person's own actions.

(b) Venue for a proceeding brought under G.S. 57D-6-02 to dissolve an LLC lies in (i) the county in this State where the LLC's principal office is located, which the party bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report for the LLC has ever been filed by the Secretary of State, as provided in the LLC's articles of organization or (ii) if the LLC has no principal office in this State, and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located.

(c) In connection with a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, the court may issue injunctions, appoint one or more persons to serve as receiver with powers and duties the court may grant under G.S. 57D-6-04, or take other action required to manage the LLC and its assets.

(d) In any proceeding brought by a member under clause (ii) of G.S. 57D-6-02(2) in which the court determines that dissolution is necessary, the court will not order dissolution if after the

court's decision the LLC or one or more other members elect to purchase the ownership interest of the complaining member at its fair value in accordance with any procedures the court may provide. (2013-157, s. 2.)

**§ 57D-6-04. Receivership.**

(a) The court in a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, or in a proceeding brought under G.S. 57D-6-07(c), may appoint one or more persons to serve as a receiver to manage the business of the LLC pending the court's decision on dissolution and if dissolution is decreed by the court to wind up the LLC. Before appointing a person to serve as a receiver of an LLC, the court shall hold a hearing on the subject after delivering notice, or causing the party who brought the dissolution proceeding to deliver notice, of the hearing to all parties and any other interested persons designated by the court.

(b) The court may require the receiver to post bond with or without sureties in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which the court from time to time may amend. The powers may include the authority to do any of the following:

- (1) Dispose of all or any portion of the assets of the LLC wherever located, at a public or private sale.
- (2) Sue and defend in the receiver's own name as receiver of the LLC.
- (3) Exercise all of the powers of the LLC to the extent necessary to manage the business of the LLC or wind up the LLC following dissolution.

(d) The court may order the LLC to compensate the receiver and reimburse the receiver's expenses, including the fees and expenses of attorneys and other professionals retained by the receiver. (2013-157, s. 2.)

**§ 57D-6-05. Decree of judicial dissolution.**

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in G.S. 57D-6-02 exist and the alternative to judicial dissolution under G.S. 57D-6-03(d) is not applicable, it may enter a decree dissolving the LLC and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for filing.

(b) After entering the decree of dissolution, the court shall direct the winding up of the LLC in accordance with G.S. 57D-6-07 and G.S. 57D-6-08 and may direct notification of claimants in accordance with G.S. 57D-6-10, 57D-6-11, and 57D-6-13. (2013-157, s. 2.)

**§ 57D-6-06. Administrative dissolution.**

(a) The Secretary of State may administratively dissolve an LLC if the Secretary of State determines that the LLC has done any of the following:

- (1) The LLC has not paid within 60 days after they are due any penalties, fees, or other payments due under this Chapter.
- (2) The LLC does not deliver its annual report to the Secretary of State on or before the 60th day after it is due.
- (3) The LLC has been without a registered agent or registered office in this State for 60 days or more.

- (4) The LLC has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (5) The LLC knowingly fails or refuses to answer completely and accurately within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) If the Secretary of State determines that one or more grounds exist under subsection (a) of this section for dissolving an LLC, the Secretary of State shall mail the LLC notice of that determination. If, within 60 days after the notice is mailed, the LLC does not correct each ground for dissolution or demonstrate to the satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall administratively dissolve the LLC by signing a certificate of dissolution that recites the ground or grounds for dissolution and the effective date of the dissolution. The Secretary of State shall file the original certificate of dissolution and mail a copy to the LLC.

(c) An LLC administratively dissolved under this section may apply to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal of any denial of the LLC's application for reinstatement are the same as those applicable to a domestic corporation under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the time the LLC applies for reinstatement, the name of the LLC is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the LLC must change its name to a name that is distinguishable on the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The effect of reinstatement of an LLC is the same as for a domestic corporation under G.S. 55-14-22. (2013-157, s. 2.)

#### **§ 57D-6-07. Winding up.**

(a) After its dissolution, an LLC shall wind up. The winding up may include continuing the business of the LLC for a period of time.

(b) Subject to subsection (c) of this section, the managers or other applicable company officials shall wind up the LLC after its dissolution. If the dissolved LLC has no managers or other applicable company officials, the person, including a former member, owning or otherwise controlling the ownership interest of the person who was the last member of the LLC may serve or appoint one or more persons to serve as manager to wind up the LLC.

(c) On application of the person, including a former member, owning or otherwise controlling the ownership interest of the last member, the superior court may wind up the LLC or appoint a receiver under G.S. 57D-6-04 to wind up the LLC. Venue for a proceeding on such application lies in (i) the county in this State where the LLC's principal office is located, which the person bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report has ever been filed for the LLC by the Secretary of State, as provided in the LLC's articles of organization or (ii) if the LLC has no principal office in this State and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located. The court shall order notice of the proceeding be given by the person making the application to all interested persons designated by the court.

(d) The person or persons charged with winding up the LLC shall collect the LLC's assets, dispose of the LLC's properties that will not be distributed in kind, discharge or make provision for

discharging the LLC's liabilities, and distribute the LLC's remaining assets as provided in G.S. 57D-6-08(2).

(e) The dissolution of the LLC does not transfer title to the LLC's assets, prevent transfer of ownership interests, or subject its managers or other company officials to standards of conduct different from those prescribed in Article 3 of this Chapter.

(f) The dissolution of the LLC does not prevent commencement of a proceeding by or against the LLC in its own name, abate or suspend a proceeding by or against the LLC, or terminate the authority of the registered agent of the LLC. (2013-157, s. 2.)

#### **§ 57D-6-08. Marshaling of assets.**

During the winding up of an LLC, the LLC's assets are to be applied as follows:

- (1) First to creditors, including interest owners, managers, and other company officials who are creditors in satisfaction, whether by payment or making provision for payment of all liabilities of the LLC.
- (2) The balance to the interest owners as distributions made in the manner provided in G.S. 57D-4-03. (2013-157, s. 2.)

#### **§ 57D-6-09. Articles of dissolution.**

Upon dissolution of an LLC, the LLC shall deliver articles of dissolution to the Secretary of State for filing. The articles of dissolution must provide the following information:

- (1) The name of the LLC.
- (2) The effective date of the dissolution.
- (3) Any other information the LLC elects to provide. (2013-157, s. 2.)

#### **§ 57D-6-10. Known claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may dispose of known claims against it by notifying claimants in writing of the dissolution. The notice must do the following:

- (1) Describe information that must be included in a claim.
  - (2) Provide an address where claims may be sent.
  - (3) State the deadline, which may not be fewer than 120 days from the date of the notice, by which the dissolved LLC must receive the claim.
  - (4) State that the claim will be barred if not received by the deadline.
- (b) A claim against the dissolved LLC is barred if either of the following occurs:
- (1) The LLC does not receive the claim by the deadline from a claimant who received notice under subsection (a) of this section.
  - (2) A claimant whose claim was rejected by written notice from the dissolved LLC does not commence a proceeding in a proper forum to enforce the claim within 90 days from the date of receipt of the rejection notice.

(c) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after dissolution. (2013-157, s. 2.)

#### **§ 57D-6-11. Unknown and certain other claims against dissolved LLC.**

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may publish notice of its

dissolution and request that persons with claims against the LLC present them in accordance with the notice. The notice must meet the following requirements:

- (1) Be published one time in a newspaper of general circulation in the county in this State where the LLC's principal office is or was last located, or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located.
- (2) Describe the information that must be included in a claim and provide an address where the claim may be sent.
- (3) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced in a proper forum within five years after the publication of the notice.

(b) If the dissolved LLC publishes a newspaper notice in accordance with subsection (a) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding in a proper forum to enforce the claim against the dissolved LLC within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under G.S. 57D-6-10.
- (2) A claimant whose claim was timely sent to the dissolved LLC but not acted on.
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of the filing by the Secretary of State of the articles of dissolution. (2013-157, s. 2.)

#### **§ 57D-6-12. Enforcement of claims.**

(a) A claim against a dissolved LLC under G.S. 57D-6-10 or G.S. 57D-6-11 may be enforced against either of the following:

- (1) Against the dissolved LLC to the extent of its undistributed assets, including coverage under any insurance policy.
- (2) Except as provided in G.S. 57D-6-13(d), against the interest owners of the dissolved LLC in proportion to but not in excess of the distributions, if any, made to each interest owner following the LLC's dissolution.

(b) G.S. 57D-6-10 and G.S. 57D-6-11 do not extend any applicable period of limitation. (2013-157, s. 2.)

#### **§ 57D-6-13. Court proceedings for contingent claims.**

(a) A dissolved LLC that has published a notice under G.S. 57D-6-11 may file an application with the superior court of the county in this State where the LLC's principal office is or was last located or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved LLC or that are based on an event occurring after dissolution but that, based on the facts known to the dissolved LLC, are estimated to arise after dissolution. Provisions need not be made for any claim that is or is anticipated to be barred under G.S. 57D-6-11(b).

(b) Within 10 days after the filing of the application, the dissolved LLC shall deliver notice of the proceeding to each claimant holding a claim described in subsection (a) of this section whose contingent claim is shown on the records of the dissolved LLC.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The dissolved LLC shall pay the fees and expenses of the guardian, including expert witness fees.

(d) Provision by the dissolved LLC for security in the amount and the form ordered by the court under subsection (a) of this section satisfies the dissolved LLC's obligations with respect to claims described in subsection (a) of this section, and the claims may not be enforced against an interest owner who receives assets in liquidation of the LLC. (2013-157, s. 2.)