

*Do you know which LLC Amendments are mandatory and which are not?*

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## Mandatory and Non-Mandatory LLC Amendments

### Mandatory Amendments

An LLC must amend its articles of organization with the Arizona Corporation Commission, if the Articles contain a statement that was:

- False or erroneous when made; or
- Within thirty (30) days after the occurrence of any of the following:
  - Any occurrence or fact which makes statements made in the articles of organization inaccurate, in any respect unless the changes relate to a change in known place of business for the LLC, its statutory agent or a change in the statutory agent because such changes, although recommended, are not required;
  - Any change in the managers, if management is vested in the managers; or
  - Any change in the members, if management is reserved to the members or a change in the members who own a twenty (20%) percent or greater interest in the LLC.

**Warning** - Failure to make mandatory amendments may result in personal liability. Further, until the mandatory amendment requirements have been met, an LLC cannot sue to enforce a contract claim in any court in Arizona.

### Non-Mandatory Amendments

An LLC may, and should, amend its articles of organization for the following purposes:

- Changing the LLC's name;
- Changing the purpose for which the LLC was created (the effect of this is generally to either expand or limit an LLC member or manager's power); and
- Changing the LLC's management structure (from management vested in the members to management in one or more of the managers or visa versa).

### Correcting Documents Filed with the Corporation Commission

An LLC may correct, and not amend as set forth above, a document filed with the Arizona Corporation Commission if the document either:

- Contains an incorrect statement and the correction does not materially alter a substantive provision in the document; or
- Was defectively executed, attested, verified or acknowledged.

## **Amending Documents Filed with the Corporation Commission**

To correct a document that has already been filed with the Arizona Corporation Commission, the articles of correction must be submitted to the Arizona Corporation Commission including the following:

- An attached copy of the document to be corrected or a description of it;
- The date the document needing correction was delivered to the Arizona Corporation Commission;
- The incorrect statement and the reason the statement is incorrect or specify the manner in which the execution, attestation, verification or acknowledgment was defective; and
- The correction of the incorrect statement or defective execution, attestation, verification or attestation.

### **Change of Known Place of Business**

LLC's formed in Arizona must maintain a known place of business in Arizona. This address can be the same address as that of the LLC's statutory agent. The change of address of the LLC's known place of business will be effective when the statement is delivered to the Arizona Corporation Commission.

To change an LLC's known place of business address, notice must be delivered and executed by either the LLC's manager or member depending on the LLC's management structure and sent to the Arizona Corporation Commission stating:

- The name of the LLC;
- The LLC's current known place of business address;

- The LLC's new known place of business address; and
- The name and street address of the LLC's statutory agent.

It is important to immediately notify the Commission to insure proper and timely delivery of any notifications.

### **Change of Member / Manager Address**

An LLC may change the address of one or more of its members by providing the Arizona Corporation Commission with a statement prepared and executed by either an LLC manager or member, depending on the LLC's management structure, setting forth the following:

- The name of the LLC;
- The current address of the member or manager; and
- The new address of the member or manager.

### **Change of Address of Statutory Agent**

To change the statutory agent's address, notice must be delivered to the Arizona Corporation Commission stating:

- The name of the LLC;
- The LLC's current known place of business address;
- The name and old street address of the LLC's statutory agent; and
- The new street address of the statutory agent.

### **Amending the LLC Name**

To amend the name of an LLC, the following steps need to be completed:

- Select an available new name with the Arizona Corporation Commission;
- Reserve the new name;
- Prepare the articles of amendment;

- Have the articles of amendment signed by the LLC's manager(s), if the LLC's management is vested in one or more managers or by a member(s) if the management of the LLC is reserved to the members; and
- File the articles of amendment with the Arizona Corporation Commission.

### **Record Keeping Requirements**

An LLC is required to keep, at the LLC's known place of business in Arizona, copies of any financial statements for the LLC for the three (3) most recent years. Compliance with this requirement is very important because failing to follow LLC administrative formalities may expose LLC members to personal liability.

In addition to the financial records, an LLC must keep at its known place of business the following:

- A current list of the full names of each member's business, residence or mailing address;
- A copy of the initial articles of organization and any mandatory amendments;
- Copies of all written operating agreements and any amendments to the agreement, including any prior written operating agreements no longer in effect;
- All documents signed by each member promising to make capital contributions to the LLC, as mentioned above; and
- Copies of the LLC's federal, state and local income tax returns and reports, if any, for the three (3) most recent years.

### **Certificate of Good Standing for the LLC, PLLC or Corporation**

A Certificate of Good Standing is a document issued by the Arizona Corporation Commission. The document is generally requested by lending institutions to insure the LLC, PLLC or corporation is in fact in 'good standing' with the Arizona Corporation Commission.

Additionally, absent any qualifying statements contained in the Certificate of Good Standing, each Certificate of Good Standing issued by the Arizona Corporation Commission can be relied on as conclusive evidence as to the veracity of the statements contained in the Certificate.

A Certificate of Good Standing will contain the following:

- Name of the LLC, PLLC or corporation;
- Date of its Organization;
- LLC, PLLC or corporation is organized under the laws of Arizona; and
- LLC, PLLC or corporation is in good standing according to the records of the Arizona Corporation Commission.

If the LLC, PLLC or corporation was formed under the laws of another state (i.e. foreign LLC, PLLC or corporation), the Certificate of Good Standing will set forth the following:

- The LLC, PLLC or corporation's name;
- The LLC, PLLC or corporation's is authorized to transact business in Arizona; and
- The LLC, PLLC or corporation is in good standing in Arizona according to the records of the Arizona Corporation Commission.

**About the Author**  
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Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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