

## *Could you terminate your LLC quickly if necessary?*

### **Terminating a Limited Liability Company**

#### **Termination Process**

The termination of an LLC is a multi-step process. The first step is to initiate the process to dissolve the LLC. An LLC can be dissolved by the occurrence of an event set forth in the LLC's operating agreement or by the court. For example, if the LLC's operating agreement says that the LLC will dissolve in the event a member leaves the LLC, the LLC will dissolve upon that occurrence.

Once the LLC is dissolved, the LLC is still in existence but no longer for its originally intended purpose. Rather, it is only in existence for the purpose of winding up its business affairs and liquidating its assets. For example, during this winding up and liquidation phase, the LLC is to first consolidate its assets and payoff its debts before distributing the remaining assets to its members and conduct any other acts necessary to liquidate its business and affairs.

Once all of the LLC's business has been concluded, the articles of termination can be filed with the Arizona Corporation Commission and upon filing will terminate the LLC's existence except for the purpose of lawsuits or other appropriate actions.

#### **Steps to Termination**

##### Step 1 -Events that Trigger the Dissolution of an LLC

An Arizona formed LLC will be dissolved upon the occurrence of the first of the following:

- An event set forth in the articles of organization or operating agreement that triggers dissolution;
- More than one half of the LLC's members, or one or more members who upon the dissolution and liquidation of the LLC's assets are entitled to receive more than one half of the LLC's assets distributed to all members upon liquidation, unless otherwise provided in the LLC's operating agreement, consent in writing to dissolve the LLC;
- The last member from the LLC withdraws unless all assignees within ninety (90) days of the last member's withdrawal admit at least one new member to the LLC, if consistent with the LLC's operating agreement;
- A member of the LLC petitions the court to dissolve the LLC; or
- The LLC fails to maintain its administrative requirements as set forth under the Arizona Revised Statutes.

### Step 2 - Actively Dissolve the LLC

Once the event triggering the dissolution of the LLC has occurred, the next step is to wind up all of the LLC's activities. This generally includes paying off any LLC debts, collecting any outstanding balances owed to the LLC, and distributing the remaining LLC assets and property to the appropriate individuals or entities.

### Step 3 - File Articles of Termination

Prepare the articles of termination and file them with the Arizona Corporation Commission. Once the articles of termination have been filed, the LLC will be terminated.

### Step 4 - Wrapping Up

Although terminated, all LLC records relating to the LLC and the business it operated should be maintained. In the event LLC assets or obligations are later discovered after the LLC has been terminated, the manager of the LLC at the time of termination or, if none, the members of the LLC will need to take the necessary actions to wind up and liquidate the remaining business affairs of the terminated LLC.

### **Forced Termination**

The Arizona Corporation Commission can forcibly terminate your LLC, against your desires, if the LLC fails to:

- Amend its articles of organization, if they contained a false or erroneous statement when made;
- Amend its articles of organization within thirty (30) days when management of the LLC is reserved to the members and there is a change in the members; OR if management of the LLC is vested in a manager or managers and there is

a change in the manager(s); OR if a member changes who owns a twenty (20%) percent or greater interest in the capital or profits of the limited liability company;

- Amend its articles if the articles contain a statement that was: 1) false or erroneous when made; or 2) within thirty (30) days after the occurrence of 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 the following: 1) the known place of business for the LLC, 2) the street address for the statutory agent, or 3) a change in the statutory agent because such changes, although highly recommended for proper receipt of notifications, are NOT required amendments by the Arizona Corporation Commission;
- Satisfy publication requirements;
- Maintain a statutory agent for sixty (60) days or more after the statutory agent's resignation;
- Maintain a known place of business for sixty (60) days or more after changing its previous known place of business;
- Respond to interrogatories;
- Pay certain fees or penalties required within sixty (60) days after the fees or penalties are due; or
- Include in the articles of organization and operating agreement the language necessary to avoid automatic termination when the sole member of the LLC dies.

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## Termination Effects

Upon the signing of the articles of termination, the terminated LLC ceases to exist for most purposes. Although the LLC ceases to exist for the purpose of conducting business, it remains in existence for the purpose of lawsuits or other proceedings or actions.

## Assets Discovered After LLC Termination

When assets or liabilities are discovered after the LLC has been terminated, despite the termination, the managers of the LLC at the time of the termination or, if none, the members may act for the LLC to liquidate and wind up the remaining newly discovered assets or liabilities.

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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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