

# How To Avoid A Messy Business Divorce: The Importance Of An LLC Operating Agreement Upon Dissolution Or Dissociation

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The dissolution of a limited liability company (LLC) can be just as complicated and messy as a divorce. However, it does not need to be. A well drafted operating agreement when you first form the LLC can help avoid confusion and costly litigation. Generally, the terms of the operating agreement will be controlling and provide the roadmap for the dissociation (removal) of a member (owner) or dissolution of the LLC. It is more problematic when the terms of the operating agreement are vague, key provisions are absent or there is no operating agreement. When one of these scenarios is present, litigation is often the result. New Jersey's LLC Act makes clear why it is important to have a well drafted operating agreement. In most instances, the law allows members of an LLC to choose the results of a dispute in advance. Under the law, a member of an LLC can be dissociated in the following circumstances:

- 1) The member resigns (unless restricted from doing so by the terms of the operating agreement);
- 2) An event triggering dissociation as defined in the operating agreement;
- 3) The bankruptcy of a member of the LLC;
- 4) The death or incompetence of a member; or
- 5) The termination or dissolution of a member (if an entity).

In addition, the LLC Act provides that a member can be dissociated by a Court if a member engaged in wrongful conduct that materially effects the business of the LLC, willfully or persistently breaches the

operating agreement or engaged in conduct that makes it not reasonable practicable to carry on the business with the member.

Similar to dissociation, an LLC is dissolved when:

- 1) On the dissolution date provided in the certification of formation;
- 2) An event triggering dissolution as defined in the operating agreement;
- 3) Unanimous written consent of the members; or
- 4) 90 days after the date the LLC no longer has at least one member.

Even when the operating agreement is silent or where none exists, an LLC can be dissolved by a Court upon a finding that it is not reasonably practicable to carry on the business.

Although these criteria may seem straightforward, Courts employ a fact sensitive analysis to determine whether the criterion has been met. Therein lies the rub. When members of an LLC seek to dissociate another member, it is usually at the objection of the member being sought to be dissociated. Similarly, members often seek dissolution at the objection of at least one member when the members seeking to dissolve want to continue the business under another legal entity without having to pay certain members.

Dissociation of a member does not cutoff all rights of the ousted or dissociated member. The dissociated member will generally continue to receive distributions to which they are entitled under the operating agreement. If not so provided, the dissociated member gets his or her fair value of the LLC. Upon dissolution, the LLC must wind up its affairs. Check back to this blog for a future blog on dissolution and the winding up of the affairs of an LLC.

It is also important to know that the New Jersey LLC Act has been revised. The Revised LLC Act will be effective on **March 1, 2014**. Although many of these provisions remain the same, there are many

subtle and some not so subtle changes that lie ahead. If you are a member of an LLC seeking to dissociate another member or dissolve the LLC, it is important to understand your rights and have representation to assist you. Conversely, if another member is seeking to dissociate you or dissolve the LLC over your objection, you must get competent legal counsel to defend your ownership position.