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AB-1722 Limited liability companies: dissolution: cancellation of articles of organization. (2015-2016)

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Assembly Bill No. 1722

CHAPTER 66

An act to amend Sections 17707.01 and 17707.02 of the Corporations Code, relating to business.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1722, Wagner. Limited liability companies: dissolution: cancellation of articles of organization.

Existing law, the California Revised Uniform Limited Liability Company Act, authorizes a limited liability company to have any lawful purpose, except as specified. A limited liability company is an entity distinct from its members. Existing law authorizes one or more persons to form a limited liability company by, among other things, signing and delivering articles of organization to the Secretary of State. Under existing law, a limited liability company is a member-managed limited liability company unless the articles of organization contain a statement that the limited liability company is to be manager managed. Under existing law, the operating agreement governs, among other things, relations among the members as members and between the members and the limited liability company and the activities of the limited liability company.

Under existing law, a limited liability company is dissolved, and its activities are required to be wound up, if, among other things, a majority of the members of the limited liability company votes to dissolve.

This bill would instead require the vote of 50% or more of the voting interests of the members of the limited liability company to dissolve.

Under existing law, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, are authorized to execute and acknowledge a certificate of cancellation of articles of organization, on a specified form prescribed by the Secretary of State.

This bill would replace that majority requirement to cancel the articles of organization with 50% or more of the voting interests of the members or managers, or 50% or more of the persons signing the articles of incorporation, as applicable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17707.01 of the Corporations Code is amended to read:

17707.01. A limited liability company is dissolved, and its activities shall be wound up, upon the happening of the first to occur of the following:

(a) On the happening of an event set forth in a written operating agreement or the articles of organization.

(b) By the vote of 50 percent or more of the voting interests of the members of the limited liability company or a greater percentage of the voting interests of members as may be specified in the articles of organization, or a written operating agreement.

(c) The passage of 90 consecutive days during which the limited liability company has no members, except that, on the death of a natural person who is the sole member of a limited liability company, the status of the member, including a membership interest, may pass to one or more heirs, successors, and assigns of the member by will or applicable law. An heir, successor, or assign of the member's interest becomes a substituted member pursuant to paragraph (4) of subdivision (c) of Section 17704.01, subject to administration as provided by applicable law, without the permission or consent of the heirs, successors, or assigns or those administering the estate of the deceased member.

(d) Entry of a decree of judicial dissolution pursuant to Section 17707.03.

SEC. 2. Section 17707.02 of the Corporations Code is amended to read:

17707.02. (a) Notwithstanding any other provision of this title, if a domestic limited liability company has not conducted any business, 50 percent or more of the voting interests of the members, or, if there are no members, 50 percent or more of the voting interests of the managers, if any, or if no members or managers, the person or 50 percent or more of the persons signing the articles of organization, may execute and acknowledge a certificate of cancellation of articles of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of State's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the articles of organization was filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.

(6) That the limited liability company has not conducted any business from the time of the filing of the articles of organization.

(7) That 50 percent or more of the voting interests of the managers or members voted, or, if no managers or members, the person or 50 percent or more of the persons signing the articles of organization, voted to dissolve the limited liability company.

(8) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of State within 12 months from the date that the articles of organization was filed. The Secretary of State shall notify the Franchise Tax Board of the cancellation.

(c) Upon filing a certificate of cancellation pursuant to subdivision (a), a limited liability company shall be canceled and its powers, rights, and privileges shall cease.