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AB-1802 Limited liability companies. (2021-2022)

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Assembly Bill No. 1802

CHAPTER 31

An act to amend Sections 17707.06 and 17707.08 of the Corporations Code, relating to business.

[Approved by Governor June 21, 2022. Filed with Secretary of State June 21, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1802, Maienschein. Limited liability companies.

Existing law, the California Revised Uniform Limited Liability Company Act, 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. Existing law provides for filing a certificate of cancellation of the articles of organization in specified circumstances. Existing law, except as specified, authorizes managers or specified other persons, as applicable, to wind up the affairs of the limited liability company. Existing law provides that a limited liability company that has filed a certificate of cancellation continues to exist for limited purposes, including the purpose of winding up its affairs. Existing law requires those persons winding up the affairs of the limited liability company to give written notice of the commencement of winding up by mail to creditors and claimants. Existing law requires that any assets inadvertently or otherwise omitted from the winding up continue in the canceled limited liability company for the benefit of the persons entitled to those assets upon cancellation, and, on realization, be distributed accordingly. Existing law, except as specified, requires the managers of a limited liability company or certain other persons, as applicable, to file with the Secretary of State a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company under existing law.

This bill would specifically require that omitted assets be used to discharge unsatisfied liabilities, if any, known to the company, and that any excess be distributed to the members. If assets are omitted from the winding up, the bill would authorize any person authorized to wind up the affairs of a limited liability company that has filed a certificate of cancellation to use the assets to discharge the liabilities of the limited liability company and distribute any remaining assets to the members. The bill would correct certain cross-references relating to the dissolution, distribution, and winding up procedures.

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

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

SECTION 1. Section 17707.06 of the Corporations Code is amended to read:

17707.06. (a) A limited liability company that has filed a certificate of cancellation nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing

of and conveying its property, and collecting and dividing its assets. A limited liability company shall not continue business except so far as necessary for its winding up.

(b) No action or proceeding to which a limited liability company is a party abates by the filing of a certificate of cancellation for the limited liability company or by reason of proceedings for its winding up and dissolution.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the canceled limited liability company for the benefit of the persons entitled to those assets upon cancellation and on realization shall be used to discharge unsatisfied liabilities, if any, known to the company, and any excess shall be distributed to the members. If assets are inadvertently or otherwise omitted from the winding up, any person authorized to wind up the affairs of a limited liability company that has filed a certificate of cancellation under Section 17707.04 may use the assets to discharge the liabilities of the limited liability company and may distribute to the members the assets not so used.

(d) After cancellation of the limited liability company, the limited liability company is bound by both of the following:

(1) The act of a person authorized to wind up the affairs of the limited liability company, if the act is appropriate for winding up the activities of the limited liability company.

(2) The act of a person authorized to act on behalf of the limited liability company, if the act would have bound the limited liability company before cancellation, if the other party to the transaction did not have notice of the cancellation.

SEC. 2. Section 17707.08 of the Corporations Code is amended to read:

17707.08. (a) (1) The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to this article unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

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

(B) Any other information the persons filing the certificate of dissolution determine to include.

(C) The event listed in Section 17707.01 causing dissolution.

(3) If a dissolution pursuant to subdivision (b) of Section 17707.01 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Section 17707.04 and distribution of its assets pursuant to Section 17707.05, unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in that case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

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

(B) 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.

(C) That upon the filing of the certificate of cancellation, except as provided in Section 17707.06, the limited liability company shall be canceled and its powers, rights, and privileges shall cease.

(D) Any other information the persons filing the certificate of cancellation of articles of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing.

(c) Upon filing a certificate of cancellation pursuant to subdivision (b), except as provided in Section 17707.06, a limited liability company shall be canceled and its powers, rights, and privileges shall cease.