

Implementation of 2002 LLC Act Amendments

The Corporation Division, Bureau of Commercial Services, has made several changes to implement the recent amendments to the Limited Liability Company Act.

Good Standing and Not In Good Standing

The Bureau of Commercial Services began issuing certificates of good standing for limited liability companies (LLCs) in January 2003. The certificate states that the domestic company is validly organized or that the foreign company is validly authorized to transact business in the state, that it has satisfied its annual filing obligations, and that it is in good standing in Michigan. To avoid confusion, the previously used certificate of status for an LLC is no longer issued.

Sections 207a and 909 of the Limited Liability Company Act (the Act) as amended, MCL 450.4207a and 450.4909, provide that if a domestic or foreign LLC or professional limited liability company (PLLC) fails to file an annual statement or annual report within two years of the due date, the agency must notify the company of the delinquency. If the missing statements, reports, and fees are not submitted within 60 days after the notice is sent, the company will not be in good standing. LLCs and PLLCs that are "not in good standing" remain active until dissolved, but no documents will be filed until the entity is restored to good standing. A certificate attesting that the company is validly in existence and has not been dissolved or that the foreign company's certificate of authority has not been withdrawn and that the company has not met its annual filing obligations may be issued for a company that is not in good standing.

In late February, the first notices under the new provisions were sent to domestic and foreign LLCs and PLLCs. The first update to the database to add "not in good standing"

status for LLCs and PLLCs was made on May 1, 2003. Some errors in the update have been identified and the Department of Information Technology has been working with the agency to ensure that the errors are corrected. If a PLLC has filed an annual statement but has not filed an annual report listing the members and managers, the PLLC will be sent a notice requesting that the annual report be submitted.

Only names of active LLCs in good standing are considered when

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determining name availability. The agency is working with the Web team to revise the business entity search at www.michigan.gov/corporations to include whether the LLC is in good standing. The name availability search has been temporarily removed from the Web site until it can be modified to improve its accuracy. Until the business entity search is updated, the good standing status of an LLC and name availability can be checked by calling (517) 241-6470 or by faxing your request to (517) 241-0537.

Certificate of Restoration of Good Standing

If an LLC or a PLLC is not in good standing for failure to file an annual statement or report, it can be restored to good standing by submitting a certificate of restoration of good standing and annual statements or annual reports and fees for all of the years that the statements or reports were not filed. The fee for the certificate of

restoration is \$50. The fee for each annual statement is \$15. The annual statement and annual report for PLLCs has been combined into one form. The fee for the annual statement and report for PLLCs is \$65 (\$15 for the annual statement and \$50 for the annual report), and the late penalty for PLLCs is \$50.

Forms

The new certificates of restoration of good standing for domestic and foreign LLCs can be found at www.cis.state.mi.us/bcsc/forms/corp/llc/770.pdf and www.cis.state.mi.us/bcsc/forms/corp/llc/771.pdf, respectively. The forms can be filled in online and printed for submission through MICH-ELF, by mail, or at the counter. Preprinted annual statements for LLCs and preprinted annual statements and reports for PLLCs can be obtained by calling (517) 241-6470 or faxing a request to (517) 241-0537. No generic forms for the LLC annual statements or PLLC annual statements and reports are available at this time.

Other forms prepared by the agency with a revision date before January 2003 may include instructions that are inconsistent with the changes in 2002 PA 686. The skeleton forms that were drafted before the recent amendments may still be used, but the current requirements must be applied. For example, "organizer" should be used to refer to the person signing the articles, and the organizer need not be a person who will become a member. In addition, documents may be signed by an agent. A document signed by an attorney-in-fact should indicate whether the person is signing for a member or manager. A document that substantially conforms to the requirements of the act must be filed. As forms are revised, the latest versions will be posted on the web site at www.michigan.gov/corporations.

Dissolution by Expiration of Term

Section 801 of the Act, MCL 450.4801, was amended to provide that an LLC dissolves by expiration of the term

specified in the articles, eliminating the need to file a certificate of dissolution. The database has been updated to reflect dissolutions by expiration of term. There are currently 31,154 active LLCs with fixed terms. The articles of organization should be reviewed to determine if the company has a fixed term. The articles may be amended to extend the term or to change the term to perpetual, but there is no statutory provision to renew the existence of an LLC after it has dissolved by expiration of term. If a dissolved LLC did not intend for the stated term to result in dissolution, section 106 of the Act, MCL 450.4106, should be reviewed to determine if a certificate of correction is appropriate.

Service of Process on LLC Without a Resident Agent

Section 207(4) of the Act, MCL 450.4207(4), provides that if an LLC fails to appoint or maintain an agent or the agent cannot be found or served through the exercise of reasonable diligence, service may be made by delivering or mailing by registered mail a summons and a copy of the complaint to the Bureau of Commercial Services. No fee is required for the service under section 207(4).

For domestic LLCs the agency logs in the summons and complaint but does not forward the summons and complaint or locate the LLC. For foreign LLCs with a certificate of authority to transact business in Michigan, however, the agency does forward copies of any process served on the administrator to the address provided in the foreign LLC's application, as provided in MCL 450.5002(d).

Review the Status of Your Clients' Domestic or Foreign LLCs and PLLCs

If a company is not in good standing, request that the Corporation Division review the record to determine what needs to be filed to return the company to good standing. Before a certificate of restoration of good standing is submitted, do a name availability

check for the true name and any assumed names of the company. If there will be any delay in submitting the certificate of restoration, consider reserving the name or names for six months to ensure that it or they will be available when the certificate is submitted.

If the company dissolved by expiration of term, review the company's records regarding the decision to have a fixed term and determine whether the company intended to dissolve by expiration of term. In some instances new articles of organization must be filed for the LLC since there is no provision to renew the company's existence after the company is dissolved.

If there appears to be an error in the Corporation Division's records, contact a document examiner and request that he or she review the record or fax a request for review to (517) 241-0537. If an indexing or entry error has been made, the examiner can correct it. If a document, annual statement, or annual report is not in the record but was submitted, the examiner may request a copy of the filed document or a copy of the submitted document, statement, or report, and proof of payment.

G. Ann Baker is the director of the Corporation Division of the Bureau of Commercial Services. Ms. Baker is a member of the International Association of Corporate Administrators. Ms. Baker is a member of the State Bar of Michigan and the American Bar Association. She is a member of the State Bar of Michigan Committee on Libraries, Legal Research, and Publications, and is vice chairperson of the Business Law Section Council. She is a member of the Corporate Law Committee and the Unincorporated Enterprises' Subcommittee on the Limited Liability Company Act. She has been a frequent speaker at ICLE courses and is actively involved in programs to train officers and directors of nonprofit corporations.