

Part 7

Dissolution and Winding up

48-3a-701 Events causing dissolution.

A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

- (1) an event, circumstance, or date that the certificate of organization or operating agreement states causes dissolution;
- (2) the consent of all the members;
- (3) the passage of 90 consecutive days during which the limited liability company has no members unless:
 - (a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and
 - (b) at least one person becomes a member in accordance with the consent;
- (4) upon a petition brought by a member, the entry of a court order dissolving the limited liability company on the grounds that:
 - (a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or
 - (b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement;
- (5) upon a petition brought by a member, the entry of a court order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:
 - (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
 - (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or
- (6) the signing and filing of a statement of administrative dissolution by the division under Subsection 48-3a-708(3).

48-3a-702 Election to purchase in lieu of dissolution.

- (1)
 - (a) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability company, the limited liability company may elect or, if the limited liability company fails to elect, one or more members may elect to purchase the interest in the limited liability company owned by the applicant member at the fair market value of the interest, determined as provided in this section.
 - (b) An election pursuant to this Subsection (1) is irrevocable unless a court determines that it is equitable to set aside or modify the election.
- (2)
 - (a) An election to purchase pursuant to this section may be filed with a court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-3a-701(5) or at any later time as the court in the court's discretion may allow.
 - (b) If the limited liability company files an election with a court within the 90-day period, or at any later time allowed by the court, to purchase the interest in the limited liability company

owned by the applicant member, the limited liability company shall purchase the interest in the manner provided in this section.

- (3)
 - (a) If the limited liability company does not file an election with a court within the time period, but an election to purchase the interest in the limited liability company owned by the applicant member is filed by one or more members within the time period, the limited liability company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the court of an election by members to purchase the interest in the limited liability company owned by the applicant member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the applicant member.
 - (b) The notice shall state the name and the percentage interest in the limited liability company owned by the applicant member and the name and the percentage interest in the limited liability company owned by each electing member.
 - (c) The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the limited liability company in accordance with this section and of the date by which any notice of intent to participate must be filed with the court.
- (4) Members who wish to participate in the purchase of the interest in the limited liability company of the applicant member must file notice of their intention to join in the purchase by electing members no later than 30 days after the effective date of the limited liability company's notice of their right to join in the election to purchase.
- (5) All members who have filed with the court an election or notice of their intention to participate in the election to purchase the interest in the limited liability company of the applicant member thereby become irrevocably obligated to participate in the purchase of the interest from the applicant member upon the terms and conditions of this section, unless the court otherwise directs.
- (6) After an election has been filed by the limited liability company or one or more members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled, nor may the applicant member sell or otherwise dispose of the applicant member's interest in the limited liability company, unless the court determines that it would be equitable to the limited liability company and the members, other than the applicant member, to permit any discontinuance, settlement, sale, or other disposition.
- (7) If, within 60 days after the earlier of the limited liability company filing of an election to purchase the interest in the limited liability company of the applicant member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the applicant member, the applicant member and electing limited liability company or members reach agreement as to the fair market value and terms of the purchase of the applicant member's interest, the court shall enter an order directing the purchase of the applicant member's interest, upon the terms and conditions agreed to by the parties.
- (8) If the parties are unable to reach an agreement as provided for in Subsection (7), upon application of any party, the court shall stay the proceedings under Subsection 48-3a-701(5) and determine the fair market value of the applicant member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3a-701(5) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.
- (9)

- (a) Upon determining the fair market value of the interest in the limited liability company of the applicant member, the court shall enter an order directing the purchase of the interest in the limited liability company upon terms and conditions the court determines to be appropriate.
 - (b) The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of the interest in the limited liability company among members if the interest in the limited liability company is to be purchased by members.
- (10)
- (a) In allocating the applicant member's interest in the limited liability company among holders of different classes of members, the court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable.
 - (b) The court may direct that holders of a specific class or classes may not participate in the purchase.
 - (c) The court may not require any electing member to purchase more of the interest in the limited liability company owned by the applicant member than the percentage interest that the purchasing member may have set forth in the purchasing member's election or notice of intent to participate filed with the court.
- (11)
- (a) Interest may be allowed at the rate and from the date determined by the court to be equitable.
 - (b) However, if the court finds that the refusal of the applicant member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.
- (12) If the court finds that the applicant member had probable ground for relief under Subsection 48-3a-701(5), the court may award to the applicant member reasonable fees and expenses of counsel and experts employed by the applicant member.
- (13)
- (a) Upon entry of an order under Subsection (7) or (9), the court shall dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5) and the applicant member shall no longer have any rights or status as a member of the limited liability company, except the right to receive the amounts awarded to the applicant member by the court.
 - (b) The award is enforceable in the same manner as any other judgment.
- (14)
- (a) The purchase ordered pursuant to Subsection (9) shall be made within 10 days after the date the order becomes final, unless before that time the limited liability company files with the court a notice of the limited liability company's intention to file a statement of dissolution.
 - (b) The statement of dissolution must then be adopted and filed within 60 days after notice.
- (15)
- (a) Upon filing of a statement of dissolution, the limited liability company is dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant to Subsection (9) is no longer of any force or effect.
 - (b) However, the court may award the applicant member reasonable fees and expenses in accordance with Subsection (12).
 - (c) The applicant member may continue to pursue any claims previously asserted on behalf of the limited liability company.
- (16) Any payment by the limited liability company pursuant to an order under Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is subject to the provisions of Sections 48-3a-405 and 48-3a-406.

Amended by Chapter 401, 2023 General Session

48-3a-703 Winding up.

- (1)
 - (a) A dissolved limited liability company shall wind up the limited liability company's activities and affairs.
 - (b) Except as otherwise provided in Section 48-3a-704, the limited liability company only continues after dissolution for the purpose of winding up.
- (2) In winding up the limited liability company's activities and affairs, a limited liability company:
 - (a) shall discharge the limited liability company's debts, obligations, and other liabilities, settle and close the limited liability company's activities and affairs, and marshal and distribute the assets of the limited liability company; and
 - (b) may:
 - (i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;
 - (ii) preserve the limited liability company activities, affairs, and property as a going concern for a reasonable time;
 - (iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
 - (iv) transfer the limited liability company's property;
 - (v) settle disputes by mediation or arbitration;
 - (vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and
 - (vii) perform other acts necessary or appropriate to the winding up.
- (3)
 - (a) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the limited liability company.
 - (b) If the person does so, the person has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).
- (4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):
 - (a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1); and
 - (b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate of organization stating:
 - (i) that the limited liability company has no members;
 - (ii) the name and street and mailing addresses of the person; and
 - (iii) that the person has been appointed pursuant to this subsection to wind up the limited liability company.
- (5) A court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities and affairs:
 - (a) upon a petition by a member if the member establishes good cause;
 - (b) upon a petition by a transferee if:
 - (i) the company does not have any members;

- (ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and
 - (iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or
- (c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

Amended by Chapter 401, 2023 General Session

48-3a-704 Rescinding dissolution.

- (1) A limited liability company may rescind the limited liability company's dissolution, unless a statement of termination applicable to the limited liability company is effective, a court has entered an order under Subsection 48-3a-701(4) or (5) dissolving the limited liability company, or the division has dissolved the limited liability company under Section 48-3a-708.
- (2) Rescinding dissolution under this section requires:
- (a) the consent of each member;
 - (b) if a statement of dissolution applicable to the limited liability company has been filed by the division but has not become effective, the delivery to the division for filing of a statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution; and
 - (c) if a statement of dissolution applicable to the limited liability company is effective, the delivery to the division for filing of a statement of correction under Section 48-3a-208 stating that dissolution has been rescinded under this section.
- (3) If a limited liability company rescinds its dissolution:
- (a) the limited liability company resumes carrying on its activities and affairs as if dissolution had never occurred;
 - (b) subject to Subsection (3)(c), any liability incurred by the limited liability company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
 - (c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Amended by Chapter 401, 2023 General Session

48-3a-705 Known claims against dissolved limited liability company.

- (1) A dissolved limited liability company in winding up may dispose of the known claims against it by following the procedures described in this section.
- (2) A limited liability company in winding up, electing to dispose of known claims pursuant to this section, may give written notice of the limited liability company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:
- (a) describe the information that must be included in a claim;
 - (b) provide an address to which written notice of any claim must be given to the limited liability company;
 - (c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved limited liability company must receive the claim; and
 - (d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.
- (3) Unless sooner barred by another state statute limiting actions, a claim against the dissolved limited liability company is barred if:

- (a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved limited liability company by the deadline; or
 - (b) the dissolved limited liability company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
- (4) Claims which are not rejected by the dissolved limited liability company in writing within 90 days after receipt of the claim by the dissolved limited liability company shall be considered approved.
- (5) The failure of the dissolved limited liability company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
- (6) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-3a-706 Other claims against dissolved limited liability company.

- (1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the limited liability company to present them in accordance with the notice.
- (2) A notice under Subsection (1) must:
- (a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the county in which the office of the limited liability company's registered agent is or was last located and in accordance with Section 45-1-101;
 - (b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and
 - (c) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.
- (3) If a dissolved limited liability company publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the limited liability company not later than three years after the publication date of the notice:
- (a) a claimant that did not receive notice in a record under Section 48-3a-705;
 - (b) a claimant whose claim was timely sent to the limited liability company but not acted on; and
 - (c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
- (4) A claim not barred under this section or Section 48-3a-705 may be enforced:
- (a) against a dissolved limited liability company, to the extent of its undistributed assets; and
 - (b) except as otherwise provided in Section 48-3a-707, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the limited liability company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Enacted by Chapter 412, 2013 General Session

48-3a-707 Court proceedings.

- (1)
 - (a) A dissolved limited liability company that has published a notice under Section 48-3a-706 may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability company, are reasonably expected to arise after the effective date of dissolution.
 - (b) Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-3a-706(3).
- (2) No later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the limited liability company.
- (3)
 - (a) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown.
 - (b) The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.
- (4) A dissolved limited liability company that provides security in the amount and form ordered by the court under Subsection (1) satisfies the limited liability company's obligations with respect to claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

Amended by Chapter 401, 2023 General Session

48-3a-708 Administrative dissolution.

- (1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited liability company administratively if the limited liability company does not:
 - (a) pay any fee, tax, interest, or penalty required to be paid to the division not later than 60 days after it is due;
 - (b) deliver an annual report to the division not later than 60 days after it is due; or
 - (c) have a registered agent in this state for 60 consecutive days.
- (2) If the division determines that one or more grounds exist for administratively dissolving a limited liability company, the division shall serve the limited liability company with notice in a record of division's determination.
- (3) If a limited liability company, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the limited liability company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited liability company pursuant to Section 48-3a-209.
- (4) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-3a-703, 48-3a-705, 48-3a-706, 48-3a-707, and 48-3a-711, or to apply for reinstatement under Section 48-3a-709.

- (5) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

Enacted by Chapter 412, 2013 General Session

48-3a-709 Reinstatement.

- (1) A limited liability company that is administratively dissolved under Section 48-3a-708 may apply to the division for reinstatement under the limited liability company's same name at any time after the effective date of dissolution if the limited liability company's name is available and the limited liability company delivers to the division for filing an application for reinstatement that states:
 - (a) the name of the limited liability company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-3a-108;
 - (b) the address of the principal office of the limited liability company and the name and address of its registered agent;
 - (c) the effective date of the limited liability company's administrative dissolution; and
 - (d) that the grounds for dissolution did not exist or have been cured.
- (2) A limited liability company administratively dissolved under Section 48-3a-708 on or after May 1, 2019, but before May 1, 2024, may apply for reinstatement under the limited liability company's same name if the limited liability company's name is available and the limited liability company delivers to the division for filing an application for reinstatement that satisfies the requirements of Subsections (1)(a) through (c).
- (3) A limited liability company retains the limited liability company's name and assumed name, as described in Section 42-2-6.6, for five years after the day on which the dissolution is effective.
- (4) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited liability company was administratively dissolved.
- (5) If the division determines that an application under Subsection (1) or (2) contains the information required by Subsection (1) or (2), is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (4) have been made, the division shall:
 - (a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;
 - (b) file the statement of reinstatement; and
 - (c) serve a copy of the statement of reinstatement on the limited liability company.
- (6) When reinstatement under this section is effective, the following rules apply:
 - (a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
 - (b) The limited liability company may resume its activities and affairs as if the administrative dissolution had not occurred.
 - (c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

Amended by Chapter 232, 2024 General Session

48-3a-710 Judicial review of denial of reinstatement.

- (1) If the division denies a limited liability company's application for reinstatement following administrative dissolution, the division shall serve the limited liability company with a notice in a record that explains the reasons for the denial.
- (2) A limited liability company may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.

Enacted by Chapter 412, 2013 General Session

48-3a-711 Disposition of assets in winding up.

- (1) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.
- (2) After a limited liability company complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-3a-503:
 - (a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and
 - (b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502.
- (3) If a limited liability company does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.
- (4) All distributions made under Subsections (2) and (3) must be paid in money.

Enacted by Chapter 412, 2013 General Session