

Business Litigation Issues

Options when limited liability relationships go south

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By combining partnership flexibility with corporate asset protection, the limited liability company (“LLC”) is an extremely popular structure when individuals form a small business. However, as a result of the pandemic’s economic problems combined with recent high interests, we have seen an escalation of LLC infighting and LLC members concluding they can no longer work together. In these situations, the law provides a number of options.

If the LLC members can agree upon terms, one or more LLC member(s) can purchase the membership interests of those members with whom they no longer wish to work. The process is simple and relatively inexpensive, requiring only the amendment of certain LLC documents, a filing with the California Secretary of State and, if done properly, the preparation of a Settlement Agreement that outlines the buyout’s terms and releases to prevent later litigation should a party to the agreement determine he or she entered into the agreement without full knowledge of the LLC’s financial status and prospects.

Also, simple and inexpensive is a voluntary dissolution where the LLC is dissolved, its bills and taxes are paid, and the

LLC winds up its affairs. Under California law, unless the LLC’s operating agreement provides otherwise, an LLC can be dissolved upon the vote of 50% or more of the LLC’s voting interests.

Finally, any LLC manager or member can file an action for an order dissolving the LLC and winding up its affairs by demonstrating it is impractical to carry on the LLC with its current Operating Agreement, dissolution is necessary to protect the members’ rights, or the LLC’s management is deadlocked or subject to internal dissension. If such an action is filed, members wishing to avoid dissolution may purchase the complaining members’ interests at their fair market value as determined by three court-appointed appraisers.

LLC failures can often be preempted when an LLC is formed by the careful selection of fellow LLC members and the preparation of a well-thought-out Operating Agreement. Our firm has extensive experience in LLC formations, the preparation of Operating Agreements, and when necessary, the dissolution of LLCs. We invite you to contact us if we can be of assistance.

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