

Amendments to Ohio General Corporation and Limited Liability Company Laws

In close consultation with the Ohio State Bar Association, the Ohio General Assembly made significant amendments to the Ohio General Corporation Law, Chapter 1701 of the Ohio Revised Code, which became effective May 4, 2012. Conforming amendments were also made to the Non-Profit Corporation

Law in Chapter 1702. Key amendments to Chapter 1701 are as follows:

- General Corporation Law and Nonprofit Corporation Law now provide that the right to indemnification or advancement of expenses arising under a provision of the articles of incorporation or the regulations of a corporation cannot be impaired or eliminated after the act or omission has occurred, unless the indemnification



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provision permits elimination or impairment after the act or omission has occurred.

- The required number of directors has been reduced to no less than one, and that number may be changed at a shareholders meeting. In addition, directors must be natural persons at least 18 years of age.
- Dissenting shareholders are not always entitled to relief if an amendment to the articles of incorporation makes certain changes or

if a corporation is authorized to dispose of all or substantially all of its assets.

- In certain circumstances, the following dissenting shareholders are not entitled to relief: (1) shareholders of a domestic corporation being consolidated or merged, (2) shareholders of the surviving corporation in a merger into a domestic corporation, and (3) shareholders of an acquiring corporation.
- Shareholders are now permitted notice before a vote on a proposal that relief is

available as dissenting shareholders. A shareholder receiving such notice and electing to be a dissenting shareholder must deliver to the corporation prior to the vote a written demand for the fair cash value of the shares for which the dissenting shareholder seeks payment.

- The fair cash value of the shares of a dissenting shareholder does not include any premium associated with control of the corporation or any discount for lack of minority status or marketability. In addition, if the share is listed on a National Securities Exchange at certain times, the fair cash value must be the closing sale price on the Exchange as of the applicable date.

- A resolution for voluntary dissolution may now include the date on which the certificate of dissolution will be filed, the circumstances that will lead to the filing of the certificate, or an authorization for the officers or directors to abandon the proposed dissolution before the certificate has been filed.

- In contrast with prior law, which required the names and addresses of a corporation's directors and officers or incorporators on a certificate of dissolution, now a certificate must include the Internet address of each domain name held or maintained by or on behalf of the corporation.

- The requirements regarding evidence for filing a certificate of dissolution with the Secretary of State have been modified. In addition, the prior law on public notice requirements after the filing of a certificate of dissolution has been replaced.

- In order to wind up affairs, a corporation that is dissolved voluntarily, has had its articles of incorporation canceled, or whose stated period of existence has expired must continue for five years after such

dissolution, cancellation, or expiration unless extended by a court.

- Dissolution of a corporation does not impair or eliminate any remedy available to or against the corporation or its directors, officers, or shareholders for any existing right, claim, or liability, as long as the action is brought within the required limitations period.

- The updates authorize the enforcement of any property right of a corporation that is discovered after its winding up, collection and division of assets discovered among persons entitled to those assets, or prosecution of proceedings or actions in the corporation's name.

- Section 1701.881 provides a procedure for a corporation that has given notice of its dissolution to reject any matured claim made by a claimant or to offer security to a claimant whose claim is unmatured, contingent, or conditional, including applying to the court with jurisdiction for a determination of the amount and form of insurance or other security for persons with contingent, conditional, or unmatured claims. The insurance or security must be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arise but that, based on the facts known to the corporation, are likely to arise or to become known or such longer period of time as the directors or a court may determine, not to exceed ten years after the date of dissolution.

- The amendments enumerate the duties of dissolved corporations with respect to claims and offers of security.

- New Section 1701.883(B) provides that a shareholder who receives a distribution of assets from a dissolved corporation is not liable for any claim against the corporation in an

amount in excess of the amount of the shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less. The aggregate liability of any shareholder for claims against a dissolved corporation shall not exceed the amount distributed to that stockholder after the dissolution. Pursuant to Section 1701.883(C), a shareholder may be liable for a claim against the corporation only if an action is commenced before five years after the date of dissolution or within the time limits otherwise required by Section 1701.881 or any other provision of law, whichever is less.

- The amendments modify prior law that authorized a court of common pleas to dissolve a corporation by judicial order.

Limited Liability Companies

At the same time, the Ohio General Assembly made amendments to Chapter 1705, governing limited liability companies ("LLCs"), which were also effective on May 4, 2012:

- An LLC is bound by its operating agreement whether or not it executes the agreement. In addition, an assignee of a membership interest in an LLC or a substitute member of the LLC is also bound by the operating agreement, regardless whether the assignee executes it.

- An LLC's operating agreement may not: (1) vary the rights and duties of the LLC set forth in Section 1705.04; (2) unreasonably restrict a member's right of access to the books and records of the LLC; (3) eliminate the duty of loyalty; (4) unreasonably reduce the duty of care; (5) eliminate the obligation of good faith and fair dealing; (6) eliminate manager duties set forth in Section 1705.29, although certain

refinements are permitted; (7) vary the requirement to wind up the LLC's business in cases specified in Section 1705.47; and (8) restrict the rights of third parties set forth in Chapter 1705.

- New Section 1705.161 clarifies that, when a member withdraws from an LLC, the member's right to participate in the management and conduct of the LLC terminates, as does the duty of loyalty under certain circumstances.
- Assignment of a membership interest does not give an assignee the full rights of a member, but only entitles the assignee to receive the distributions and allocations that the assignor would have been entitled to receive.
- The only remedy a creditor can seek to satisfy a judgment against the membership interest of a member or assignee is an order charging the membership interest. Such a creditor has no right to the LLC's property.
- New Section 1705.281 provides that the only fiduciary duties a member owes to an LLC and the other members are the duties of loyalty and the duty of care, which are defined therein.
- New Section 1705.282 provides that a manager who is also a member of an LLC, has been appointed in writing and has agreed in writing to serve as manager owes the duties of a manager. These duties are limited to acting in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC, and using the care of an ordinarily prudent person.
- Under the pre-May 4, 2012 statute, a member could petition the court of common pleas to dissolve the LLC if it was not reasonably practicable for the LLC to carry on business in conformity with its articles of organization and operating agreement. The amendments expand reasons for a dissolution and permit the matter to be submitted to

a "tribunal," defined as "a court or, if provided in the operating agreement or otherwise agreed, an arbitrator, arbitration panel, or other tribunal." As amended, Section 1705.47 provides that, upon petition of a member, the tribunal may declare an LLC dissolved, and the LLC's business shall be wound up, upon the occurrence of any of the following: (1) an event makes it unlawful for all or substantially all of the LLC's business to be continued, unless cured within ninety days; or (2) a determination by the tribunal that any of the following is true: (a) the LLC's economic purpose is likely to be reasonably frustrated; (b) another member has engaged in conduct relating to the LLC's business that makes it not reasonably practicable to carry on the business with that member; (c) it is not otherwise reasonably practicable to carry on the LLC's business in conformity with its operating agreement.