Business Law Section MCLE Meeting
Location: TC Wealth Partners Trust Co., Downers Grove
Date: Tuesday, January 8, 2019

11:45 AM – Noon Welcome/Introductions
Richard Lofgren, Section Chair

Noon – 1:00 PM **Program**

Converting Corporations into LLC's
Scott Singer of Digiovine, Hnilo, Jordan & Johnson, Ltd. and Marcus May of May Law Firm, LLC

Biography

See attached biographies

Presentation Summary

Scott and Marcus will discuss the new Illinois Entity Omnibus Act and its scope in allowing entities to convert into other forms of entities without being required to do a merger. This will include how to convert corporations into limited liability companies and converting LLC's into corporations as well as converting out of state entities into Illinois entities and vice versa. The presentation will also address the tax aspects related to such conversions.

Next Meeting: February 12, 2019- Adam Czerwinski of Sidebar Insurance Solutions, Inc. at the **DCBA Bar Center, Classroom.**

DCBA Events: 1/17/2019 Happy Hour @ Maggiano's Oak Brook from 5:30 pm – 7:30 pm

1/31/2019 Lawyers Lending a Hand @ DuPage Care Center 5:00 pm – 6:30 pm

Ask a Lawyer Help Desk seeking attorney volunteers on Thursday, February 22nd from 1 pm- 4:30 pm

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Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you <u>MUST</u> be logged in to view this feature)

MARKUS MAY

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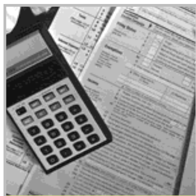
Markus May is the principal attorney of May Law Firm LLC where he works as a business transactional attorney. As a mergers and acquisitions attorney he has represented numerous clients with respect to business sales and purchases and has received numerous MBBI Collaboration Awards. Mr. May also acts as general outside business counsel to small midmarket companies where he helps them solve business related legal problems. As a transactional attorney he often drafts shareholder agreements, operating agreements, distribution, supply and manufacturing agreements, leases, and other contracts.

Mr. May served on the MBBI board of directors for six years and chaired their Meetings Committee for years. He has been the Chairman of the Business & Securities Law Section Council of the Illinois State Bar Association, the Chicago Bar Association Business Law Committee, the Chicago Bar Association Mergers and Acquisitions Sub-Committee, and the DuPage County Bar Association Business Law Committee. He is a current newsletter editor for the ISBA Business & Securities Law Section Council and a former editor of the DuPage County Bar Brief. As a member of the Institute of Illinois Business Law he helps draft Illinois statutes that impact businesses.

An accomplished author and speaker, Mr. May has published numerous legal and newspaper articles related to business law, including mergers and acquisitions, protecting business owners from personal liability, drag-along rights, and other topics. He appeared on two Illinois State Bar television programs where he taught viewers about finding a business to buy and the business buying process. He speaks frequently at seminars on business topics and graduated from the University of Colorado where he was a member of the law review.

Markus is married with two children and enjoys playing racquetball. He is a die-hard Broncos and Colorado Buffaloes fan, and is involved with his church as a small group leader.



BIOGRAPHY

DIGIOVINE HNILO JORDAN + JOHNSON LTD.

Principal
CPA, MST, CSEP

Scott A. Singer

Principal specializing in corporate, partnership/LLC, individual and estate/gift planning tax matters.

Educational Foundation

Metropolitan State College, Denver, Colorado - B.S. in Accounting (1981)
University of Denver, Denver, Colorado - Masters in Taxation (1989)

Experience

Extensive experience in preparation and review of complex tax returns, FAS 109/FIN 48 tax accruals, consulting, research and planning for a diverse client base. Wide-ranging experience in structuring transactions for maximum client benefit. Preparation or review of tax opinion letters on proposed transactions and private letter ruling requests implementing proactive planning strategies.

Provides aggressive and effective representation of client companies and individuals on audit and collection matters before the Internal Revenue Service and other taxing authorities.

Practice emphasis is in tax related areas dealing with the closely-held business in real estate ventures & debt workouts, mergers & acquisitions, construction contractors, manufacturers, distributors, moving/storage/trucking companies, state/local tax nexus issues, and estate/gift planning for high-wealth individuals. Scott Singer actively participates in continuing professional education to continually improve his knowledge and his ability to serve clients.

Professional Memberships

- American Institute of Certified Public Accountants
- Illinois CPA Society
- Certified Specialist in Estate Planning
- Naperville, St. Charles, Western DuPage, Aurora and Elgin Chambers of Commerce
- Visiting instructor Northern Illinois University Graduate Tax program

Speaking and Writing Engagements

Has authored many articles regarding taxes and is also a frequent speaker on tax related and financial issues.

"Tax issues have a dramatic impact on any business thus tax planning is critical.

I am committed to helping businesses and their owners save tax dollars, to stay in compliance, and to keep them informed of the latest changes in law."

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CONVERTING CORPORATIONS INTO LLC'S

DuPage County Bar Association
January 8, 2019

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Where we Were

If we have a company and want to turn it into another type of company or move a company from one state to another, What would we do?

- Problems with mergers?
- The "Solution"

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IIBL and NCCUSL

- Institute of Illinois Business Law
- Uniform Law Commission a/k/a NCCUSL
  - National Conference of Commissioners on Uniform State Laws

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The Approach

- Modify each applicable act - OR
- Hub and Spoke where a master statute governs the area
- “Model Entity Transactions Act” by NCCUSL

Model Entity Transactions Act

- Four kinds of transactions:
  1. Merger of one entity with another
  2. Conversion of an entity to another kind of entity
  3. An interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities
  4. Domestication of an entity originally organized in one state in another state.

Illinois addressed Conversions and Domestication in the Entity Omnibus Act as a Hub and Spoke and left mergers and interest exchanges alone

Entity Omnibus Act

- 805 ILCS 415/
- Effective July 1, 2018
- Needed to look at all other acts (corporate code, partnership, LLC Professional Corps) in order to make all references correct and no inconsistencies between statutes.
- There will be problems, and a clean up bill is in progress.

Entity Omnibus Act

- Allows an entity to:
  - convert into another entity; or
  - redomesticate into or out of Illinois
- Need a detailed plan approved by the interest holders
- A statement needs to be filed in the appropriate state office(s)
- Objective – no interest is extinguished, whether a right or an obligation, including protection of creditors' interests

Definitions

New language to get used to: e.g.

- Organic law – IL Business Corporation Act
- Organic document – Articles of Incorporation
- Governor – Board of Directors
- Interest - shares
- Protected Agreement – SH agreement

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Covered Entities

- Business corporations
- Medical corporations
- Nonprofit corporations
- Professional service corporations
- General partnerships, inc. ltd. liability p/s
- Limited partnerships inc. ltd. liability ltd. p/s
- Limited liability companies
- NO OTHER ENTITIES –Business Trusts, Cooperatives, Series LLCs?

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Ancillary Matters

- Doesn't impair rights under other laws or equity
- Can still do mergers to accomplish the same thing
- Charitable property – retains its status as charitable property
- Still get appraisal rights if you would have those under merger law or contracts

Conversions

- Domestic Entity > Domestic Entity
- Domestic Entity > Foreign Entity (if authorized)
- Foreign Entity (if authorized) > Domestic Entity
- Merger provisions in SH agreements and operating agreements continue in effect with respect to conversions

Plan of Conversion § 202

- Name and type of converting entity
- Name, type, and jurisdiction of converted entity
- Manner of converting interests from converting to converted entity (e.g. shares becomes %age interest or units, can also include cash or other property)
- The proposed public organic document if a filing entity ("Articles")
- The full text of the private organic rules that would be in a record – query is one necessary?
- Other terms and conditions of the conversion
- Any other provision required by IL law or organic rules of the converting entity (e.g. comply with SH agts and operating agts)

Approval of Conversion § 203

- In accordance with "organic rules" – bylaws, SH agts, Operating Agts., P/S agts
- If no organic rules, then the "organic law" that would apply to a merger
- If no law, then 100% approval of all interest holders entitled to vote on "any matter"
- By all interest holders that will have personal liability after the conversion (e.g. if convert to a partnership) except if an entity agreement provides for personal liability in the case of a merger or conversion and you agreed to that document
- Foreign converting entity – needs to comply with its law

Amend or Abandon Plan of Conversion § 204

- Same manner as for Plan approval or
- As provided in the plan for Governors and Interest Holders (not president) , but can't change plan adversely to an interest holder unless vote on the adverse change
- Can abandon before effective date – Need to FILE statement of abandonment before the effective date

Statement of Conversion § 205

- Filed with the SOS
- See the form.
- Attach the Public Organic Document (Articles) as an attachment
- Don't need to file the Plan of Conversion! (but you may if desired and don't need to file a statement of conversion)

Effect of Conversion § 206

- Subject to the laws of the new form of entity (e.g. LLC Act)
- The converted entity is the same entity without interruption as the converting entity even though need to change the name (e.g. "Inc." to "LLC")
- All property of the converting entity continues to be vested in the converted entity
- A liability of the converting entity continues as a liability of the converted entity.
- Except as provided by law or the plan of conversion, all of the converting entity's rights, privileges, immunities, powers, and purposes remain in the converted entity.
- Does not give any liquidation or winding up rights
- Personal liability only applies to actions after the conversion (e.g. if convert to a P/S)
- Personal liability from before the conversion, continues in effect after the conversion (e.g. if convert from P/S to LLC – still liable for P/S liabilities)
- Personal liability exposure can change – before conversion and after conversion, the applicable form of entity's laws control
- Still have any rights of contribution from other owners for pre conversion debts as though the conversion had not occurred

Domestication Article 3

An Illinois entity becomes a foreign entity or vice versa of the same type

Both states need to allow the domestication

Domestication

- Section 302 Plan of Domestication required
  - See Section 302 Requirements – similar to conversion
- Section 303 Approval of Domestication
  - similar to conversion
- Section 304 Amendment or Abandonment of Plan
- similar to conversion

Statement of Domestication § 305

- See the Form - similar to conversion
- File the "Formation Document" for the domesticated entity with the Statement
  - – e.g. Articles of Organization/Incorporation
- Don't need to file the plan
  - Can't file the plan in place of the Statement of Domestication like you can for a conversion, but can include it if you want

Effect of Domestication § 306

- Same entity
- Subject to new law
- Same effects as with a conversion
  - – e.g. if liable before domestication and domesticate in a new state, that doesn't get rid of liability

Filing Fees and Forms

- $100 for all statements except statement of amendment is $150
- Filing can only be made on forms prescribed and furnished by the SOS
- No form yet for statement of amendment, non-profit conversion (though there is for non-profit domestication)

Should a Corporation Convert to an LLC?

- LLC Benefits over Corporations
  - No corporate formalities – help with piercing the corporate veil
  - Flexibility of management without needing to meet statutory requirements or complex voting structures
  - No paid in capital franchise tax in Illinois
  - Higher filing fee no longer an issue
  - Charging order protection
  - Manager managed LLC's limit some rights to documents and withdrawal/dissociation of owners can be limited and prevent having to pay out value
  - Can define fiduciary duties more clearly than in corporations
  - Ability to change tax status and contracts continue
- Corporation Benefits over LLC's?

Additional Items to Consider

- Remember if the entity elects S-Corporation taxation, the owner rules apply even if the entity is an LLC
  - Only 1 class of stock (can be voting and non-voting)
  - Only individuals and certain trusts can be owners
- M&A Transactions
- Tax issues/effect

Markus May, Esq.

Markus May is a business transactions attorney with knowledge in a broad range of industries. He represents clients who are starting, operating, buying and selling businesses and has spoken to numerous professional and business organizations on related topics. Mr. May is a prior Chairman of the: DuPage County Bar Association Business Law Section Council, ISBA Business & Securities Law Section Council, Chicago Bar Association Business Law Committee, and CBA Mergers and Acquisitions Committee. He helps draft business laws with the Institute of Illinois Business Law (including the recent LLC Act) and is a member of the Midwest Business Brokers and Intermediaries and Exit Planning Exchange industry associations focused on helping owners buy and sell their businesses.

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BUSINESS ORGANIZATIONS
(805 ILCS 415/) Entity Omnibus Act.

(805 ILCS 415/Art. 1 heading)

ARTICLE 1.
GENERAL PROVISIONS

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/101)

Sec. 101. Short title. This Act may be cited as the Entity Omnibus Act.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/102)

Sec. 102. Definitions. In this Act:

"Approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

(1) propose a transaction subject to this Act;

(2) adopt and approve the terms and conditions of the transaction; and

(3) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

"Business corporation" means a corporation whose internal affairs are governed by the Business Corporation Act of 1983 or a similar Act in the jurisdiction of organization.

"Conversion" means a transaction authorized by Article 2.

"Converted entity" means the converting entity as it continues in existence after a conversion.

"Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 203 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

"Domestic entity" means an entity whose internal affairs are governed by the law of this State.

"Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

"Domesticating entity" means the domestic entity that approves a plan of domestication pursuant to Section 303 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

"Domestication" means a transaction authorized by Article 3.

"Entity" means:

(1) a business corporation;

(2) a medical corporation;

(3) a nonprofit corporation;

(4) a professional service corporation;

(5) a general partnership, including a limited liability partnership;

(6) a limited partnership, including a limited liability limited partnership; and

(7) a limited liability company.

"Filing entity" means an entity that is created by the filing of an organizing document with the Secretary of State.

"Foreign entity" means an entity other than a domestic entity.

"General partnership" means a partnership whose internal affairs are governed by the Uniform Partnership Act (1997) or a similar Act in the jurisdiction of organization.

"Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(1) receive or demand access to information concerning, or the books and records of, the entity;

(2) vote for the election of the governors of the entity; or

(3) receive notice of or vote on any or all issues involving the internal affairs of the entity.

"Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

"Interest" means:

(1) a governance interest in an unincorporated entity;

(2) a transferable interest in an unincorporated entity; or

(3) a share or membership in a corporation.

"Interest holder" means a direct holder of an interest.

"Interest holder liability" means:

(1) personal liability for a liability of an entity that is imposed on a person:

(a) solely by reason of the status of the person as an interest holder; or

(b) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(2) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

"Jurisdiction of organization of an entity" means the jurisdiction whose law includes the organic law of the entity.

"Limited partnership" means a partnership whose internal affairs are governed by the Uniform Limited Partnership Act (2001) or a similar Act in the jurisdiction of organization.

"Limited liability company" means a company whose internal affairs are governed by the Limited Liability Company Act or a similar Act in the jurisdiction of organization.

"Medical corporation" means a corporation whose internal affairs are governed by the Medical Corporation Act or a similar Act in the jurisdiction of organization.

"Nonprofit corporation" means a corporation whose internal affairs are governed by General Not For Profit Corporation Act of 1986 or a similar Act in the jurisdiction of organization.

"Organic law" means the statutes, if any, other than this Act, governing the internal affairs of an entity.

"Organic rules" means the public organic document and private organic rules of an entity.

"Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Plan" means a plan of conversion or domestication.

"Professional service corporation" means a corporation whose internal affairs are governed by the Professional Service Corporation Act or a similar Act in the jurisdiction of organization.

"Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document.

"Protected agreement" means:

(1) a record evidencing indebtedness and any related agreement in effect on the effective date of this Act;

(2) an agreement that is binding on an entity on the effective date of this Act;

(3) the organic rules of an entity in effect on the effective date of this Act; or

(4) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this Act.

"Public organic document" means the public record, the filing of which creates an entity, and any amendment to or restatement of that record.

"Qualified foreign entity" means a foreign entity that is authorized to transact business in this State pursuant to a filing with the Secretary of State.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Secretary of State" means the governmental entity responsible for accepting and acting on the filing of organizational documents of an entity.

"Sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic sound, symbol, or process.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/103)

Sec. 103. Relationship of Act to other laws.

(a) Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

(b) This Act does not authorize an act prohibited by, and does not affect, the application or requirements of law, other than this Act.

(c) A transaction effected under this Act may not create or impair any right or obligation on the part of a person under a provision of the law of this State other than this Act relating to a transaction involving a converting or domesticating entity unless:

(1) in the event the entity does not survive the transaction, the transaction satisfies any requirements of the provision; or

(2) in the event the entity survives the transaction, the approval of the plan is by a vote of the interest holders or governors which would be sufficient to create or impair the right or obligation directly under the provision.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/104)

Sec. 104. Required notice or approval.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger must give the notice or obtain the approval in order to be a party to a conversion or domestication.

(b) Property held for a charitable purpose under the law of this State by a domestic or foreign entity immediately before a transaction under this Act becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this State concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of court or approval by the Office of the Attorney General specifying the disposition of the property.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/105)

Sec. 105. Status of filing. A filing under this Act signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/106)

Sec. 106. Nonexclusivity. The fact that a transaction under this Act produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this Act.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/107)

Sec. 107. Reference to external facts. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan.

The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/108)

Sec. 108. Alternative means of approval of transactions.Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this Act by the unanimous vote or consent of its interest holders satisfies the requirements of this Act for approval.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/109)

Sec. 109. Appraisal rights.

(a) An interest holder of a domestic converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this Act to the extent provided:

(1) in the entity's organic rules;

(2) in the plan; or

(3) in the case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, Section 11.65 of the Business Corporation Act of 1983 applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/Art. 2 heading)

ARTICLE 2.
CONVERSION

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/201)

Sec. 201. Conversion authorized.

(a) By complying with this Article, a domestic entity may become:

(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this Article applicable to foreign entities, a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity, but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this Act.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/202)

Sec. 202. Plan of conversion.

(a) A domestic entity may convert to a different type of entity under this Article by approving a plan of conversion. The plan must be in a record and contain:

(1) the name and type of the converting entity;

(2) the name, jurisdiction of organization, and type of the converted entity;

(3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic document of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this State or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/203)

Sec. 203. Approval of conversion.

(a) A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/204)

Sec. 204. Amendment or abandonment of plan of conversion.

(a) A plan of conversion of a domestic converting entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan of conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been filed with the Secretary of State and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the Secretary of State before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting entity;

(2) the date on which the statement of conversion was filed; and

(3) a statement that the conversion has been abandoned in accordance with this Section.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/205)

Sec. 205. Statement of conversion; effective date.

(a) A statement of conversion must be signed on behalf of the converting entity and filed with the Secretary of State.

(b) A statement of conversion must contain:

(1) the name and type of the converting entity;

(2) the name and type of the converted entity;

(3) if the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the plan of conversion was approved in accordance with this Article;

(5) the text of the converted entity's public organic document, as an attachment, signed by a person authorized by the entity; and

(6) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment, signed by a person authorized by the entity.

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this State and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) may be filed with the Secretary of State instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this Act to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion becomes effective upon the date and time of filing or the later date and time specified in the statement of conversion.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/206)

Sec. 206. Effect of conversion.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity, even though the organic law of the converted entity may require the name of the converted entity may be modified based on the type of entity;

(2) all property of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this Act or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the converted entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective:

(1) the conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this State for the collection and enforcement of any of its liabilities; and

(2) appoints the Secretary of State as its agent for service of process for collecting or enforcing those liabilities.

(f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/Art. 3 heading)

ARTICLE 3. DOMESTICATION

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/301)

Sec. 301. Domestication authorized.

(a) Except as otherwise provided in this Section, by complying with this Article, a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this Section, by complying with the provisions of this Article applicable to foreign entities a foreign entity may become a domestic entity of the same type in this State if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(c) When the term domestic entity is used in this Article with reference to a foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this Act.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/302)

Sec. 302. Plan of domestication.

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) the name and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic document of the domesticated entity if it is a filing entity;

(5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this State or the organic rules of the domesticating entity.

(b) A plan of domestication may contain any other provision not prohibited by law.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/303)

Sec. 303. Approval of domestication.

(a) A plan of domestication is not effective unless it has been approved:

(1) by a domestic domesticating entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a merger, as if the domestication were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/304)

Sec. 304. Amendment or abandonment of plan of domestication.

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) the public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been filed with the Secretary of State and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the Secretary of State before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating entity;

(2) the date on which the statement of domestication was filed; and

(3) a statement that the domestication has been abandoned in accordance with this Section.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/305)

Sec. 305. Statement of domestication; effective date.

(a) A statement of domestication must be signed on behalf of the domesticating entity and filed with the Secretary of State.

(b) A statement of domestication must contain:

(1) the name, jurisdiction of organization, and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) if the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this Article or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, its public organic document, as an attachment signed by a person authorized by the entity;

(6) if the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) if the domesticated entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the Secretary of State may send any process

served on the Secretary of State pursuant to subsection (e) of Section 306.

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this State and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A statement of domestication becomes effective upon the date and time of filing or the later date and time specified in the statement of domestication.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/306)

Sec. 306. Effect of domestication.

(a) When a domestication becomes effective:

(1) the domesticated entity is:

(A) organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating entity;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion, or impairment;

(3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this Act or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) if the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

(8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under the organic law of a domestic domesticating entity to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(1) may be served with process in this State for the collection and enforcement of any of its liabilities; and

(2) appoints the Secretary of State as its agent for service of process for collecting or enforcing those liabilities.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/Art. 4 heading)

ARTICLE 4.

FEES AND OTHER MATTERS

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/401)

Sec. 401. Fees.

(a) The Secretary of State shall charge and collect in accordance with the provisions of this Act and the rules adopted under its authority all of the following:

(1) Fees for filing documents.

(2) Miscellaneous charges.

(3) Fees for the sale of lists of filings and for copies of any documents.

(b) The Secretary of State shall charge and collect for all of the following:

(1) Filing statement of conversion, $100.

(2) Filing statement of domestication, $100.

(3) Filing statement of amendments, $150.

(4) Filing statement of abandonment, $100.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/402)

Sec. 402. Powers of Secretary of State and rulemaking.

(a) The Secretary of State has the power and authority reasonably necessary to administer this Act efficiently and to perform the duties imposed in this Act. The Secretary of State's function under this Act is to be a central depository for the statements required by this Act.

(b) The Secretary of State has the power and authority to adopt rules, in accordance with the Illinois Administrative Procedure Act, necessary to administer this Act efficiently and to perform the duties imposed in this Act.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/403)

Sec. 403. Certified copies and certificates.

(a) Copies, photostatic or otherwise, of documents filed in the Office of the Secretary of State in accordance with this Act, when certified by the Secretary of State under the Great Seal of the State of Illinois, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated in the documents.

(b) Certificates by the Secretary of State under the Great Seal of the State of Illinois as to the existence or nonexistence of facts relating to entities filing under this Act, which would not appear from a certified copy of any document, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/404)

Sec. 404. Forms. All documents required by this Act to be filed in the Office of the Secretary of State shall be made on forms prescribed and furnished by the Secretary of State.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/405)

Sec. 405. File number. All documents required by this Act to be filed in the Office of the Secretary of State shall contain the filing entity's file number as assigned by the Office of the Secretary of State.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/406)

Sec. 406. Miscellaneous charges. The Secretary of State shall charge and collect:

(1) For furnishing a copy or certified copy of any document, instrument, or paper relating to a corporation, or for a certificate, $5.

(2) At the time of any service of process, notice, or demand on him or her as resident agent of a corporation, $10, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/407)

Sec. 407. Department of Business Services Special Operations Fund.

(a) The Secretary of State may charge and collect a fee for expedited services as follows:

(1) Filing statement of conversion, $200.

(2) Filing statement of domestication, $200.

(3) Filing statement of amendments, $200.

(4) Filing statement of abandonment, $200.

(b) All moneys collected under this Section shall be deposited into the Department of Business Services Special Operations Fund. No other fees or taxes collected under this Act shall be deposited into that Fund.

(c) As used in this Section, "expedited services" has the meaning ascribed to that term in Section 15.95 of the Business Corporation Act of 1983.

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/Art. 9 heading)

ARTICLE 9.

MISCELLANEOUS

(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/901)

Sec. 901. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/902)

Sec. 902. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/903)

Sec. 903. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/904)

Sec. 904. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/905)

Sec. 905. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/906)

Sec. 906. The Limited Liability Company Act is amended by repealing Sections 37-15, 37-16, 37-17, 37-31, 37-32, 37-33, and 37-34.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/907)

Sec. 907. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/908)

Sec. 908. The Uniform Partnership Act (1997) is amended by repealing Sections 903, 904, and 909.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/909)

Sec. 909. (Amendatory provisions; text omitted).
(Source: P.A. 100-561, eff. 7-1-18; text omitted.)

(805 ILCS 415/910)

Sec. 910. The Uniform Limited Partnership Act (2001) is amended by repealing Sections 1103, 1104, and 1105.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/995)

Sec. 995. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.
(Source: P.A. 100-561, eff. 7-1-18.)

(805 ILCS 415/999)

Sec. 999. Effective date. This Act takes effect July 1, 2018.
(Source: P.A. 100-561, eff. 7-1-18.)

EOA 204/304

Illinois Secretary of State
Department of Business Services
STATEMENT OF ABANDONMENT
OF CONVERSION/DOMESTICATION

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6961
www.cyberdriveillinois.com

Remit payment in the form of a check or money order payable to Secretary of State.

____
Entity File Number

Filing Fee: $100 ____ Approved: ____________

———— Submit in duplicate ———— Type or print clearly in black ink ———— Do not write above this line ————

Please circle the applicable transaction type in items 1-3.

1. Converting/Domesticating Entity Name: ____

2. Date of Filing of the Statement of Conversion/Domestication: ______________________________

3. The Statement of Conversion/Domestication has been abandoned in accordance to Section 204/304 of the Entity Omnibus Act.

4. The undersigned Entity has caused this statement to be signed by a duly authorized signer who affirms, under penalties of perjury, that the facts stated herein are true and correct. All signatures must be in **BLACK INK**.

Dated ____________________________ , ________ ________________________________
Month & Day Year Exact Name of Entity

____
Any Authorized Signer's Signature

____
Name and Title (type or print)

EOA 205

Illinois Secretary of State
Department of Business Services
STATEMENT OF CONVERSION

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6961
www.cyberdriveillinois.com

Remit payment in the form of a cashier's check, a certified check, a money order, or an Illinois attorney's or a CPA's check payable to Secretary of State.

____
New Entity File Number

Filing Fee: $100 ______________________________________ Approved: __________

Submit in duplicate —— **Type or print clearly in black ink** —— **Do not write above this line**

Converting Entity **Current file number:** ____________________

1. Converting Entity Name: ______________________________________
2. Current Entity Type: (select only one)
   - ☐ For Profit Corporation ☐ Limited Liability Company ☐ General Partnership
   - ☐ Limited Liability Partnership ☐ Limited Partnership
3. Jurisdiction and Date of Incorporation/Organization: ____________________________
4. **The conversion is authorized by the law of the foreign entity's jurisdiction of organization.**

New Entity

5. Converted Entity Name: ______________________________________
6. Converted Entity Type: (select only one)
   - ☐ For Profit Corporation ☐ Limited Liability Company ☐ General Partnership
   - ☐ Limited Liability Partnership ☐ Limited Partnership
7. Jurisdiction of Incorporation/Organization: ________________________________
8. The Converted Entity: (select only one)
   - ☐ intends to transact business in Illinois ☐ will not be transacting business in Illinois (Please set forth address below.)

   Address for Service of Process: __________________________________
   (P.O. Box alone is not acceptable)
   ____
9. Effective Date of Conversion: If a future date is chosen, MUST be within 90 days of filing.
   - ☐ Upon Filing ☐ Future Effective Date: ________________________

The Conversion was approved in accordance with Section 205 of the Entity Omnibus Act.
The formation document and fee for the Converted Entity must be attached.

---

10. The undersigned Entity has caused this statement to be signed by a duly authorized signer who affirms, under penalties of perjury, that the facts stated herein are true and correct. All signatures must be in **BLACK INK**.

Dated _________________________ , _________ ______________________________
Month & Day Year Exact Name of Converting Entity

____
Any Authorized Signer's Signature

____
Name and Title (type or print)

EOA 305

Illinois Secretary of State
Department of Business Services
STATEMENT OF DOMESTICATION

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6961
www.cyberdriveillinois.com

Remit payment in the form of a cashier's check, a certified check, a money order, or an Illinois attorney's or a CPA's check payable to Secretary of State.

____
New Entity File Number

Filing Fee: $100 ______________________________ Approved: ____________

—— **Submit in duplicate** —— **Type or print clearly in black ink** —— **Do not write above this line** ——

Domesticating Entity **Current File Number:** ______________________

1. Domesticating Entity Name: ______________________
2. Current Entity Type: (select only one)
   - ☐ For Profit Corporation ☐ Limited Liability Company ☐ General Partnership
   - ☐ Limited Liability Partnership ☐ Limited Partnership ☐ Not For Profit
3. Jurisdiction and Date of Incorporation/Organization: ______________________
4. **The domestication is authorized by the law of the foreign entity's jurisdiction of organization.**

New Entity

5. Domesticated Entity Name: ______________________
6. Jurisdiction of Incorporation/Organization: ______________________
7. The Domesticated Entity: (select only one)
   - ☐ intends to transact business in Illinois ☐ will not be transacting business in Illinois (Please set forth address below.)

   Address for Service of Process: ______________________
   (P.O. Box alone is not acceptable)
   ____
8. Effective Date of Domestication: If a future date is chosen, MUST be within 90 days of filing.
   - ☐ Upon Filing ☐ Future Effective Date: ______________________

The Domestication was approved in accordance with Section 305 of the Entity Omnibus Act.
The formation document and fee for the Domesticated Entity must be attached.

---

9. The undersigned Entity has caused this statement to be signed by a duly authorized signer who affirms, under penalties of perjury, that the facts stated herein are true and correct. All signatures must be in **BLACK INK**.

Dated ______________________ , __________ ______________________
Month & Day Year Exact Name of Domesticating Entity

____
Any Authorized Signer's Signature

____
Name and Title (type or print)

ILLINOIS OMNIBUS ENTITY ACT

By: Scott A. Singer, CPA, MST, CSEP

DHJJ CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISORS
WWW.DHJJ.COM TEL 630 420 1360 FAX 630 420 1463 NAPERVILLE, IL ST. CHARLES, IL

Entity Omnibus Act

Illinois Conversions & Domestications

- Your client company, an Illinois LLC pass-through entity, is seeking outside capital funding but needs to offer ownership and compensation arrangements that cannot be done inside an LLC structure. They desire to be a corporation. Prior to the Illinois Entity Omnibus Act, they would need to form a new Illinois corporation and then merge the LLC into the newly-formed corporation.
- The Illinois Entity Omnibus Act changes this.

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Illinois Conversions & Domestications

- The Illinois Entity Omnibus Act was effective 07/01/2018.
- The statute allows Illinois corporations and unincorporated entities to convert into a different entity form and/or to domesticate in another state.
- The statute also allows entities from other states to convert to Illinois entities and domesticate to Illinois.

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Common Entities Covered Under The Act

- Business corporations.
- Medical corporations.
- Professional service corporations.
- General partnerships.
- Limited partnerships.
- Limited liability companies.
- Nonprofit corporations.
- Et al.

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Illinois Conversion - Different Type of Entity

- There are three kinds of conversions i.e., changing the company type of entity:
  - An Illinois entity can become an Illinois entity of a different type (*e.g.,* an Illinois corporation becoming an Illinois LLC).
  - An Illinois entity can become a foreign entity of a different type if the conversion is authorized by the foreign jurisdiction (*e.g.*, an Illinois corporation becoming a Delaware LLC, if such a transaction is authorized by Delaware).
  - A foreign entity can become an Illinois entity of a different type if the conversion is authorized by the foreign jurisdiction (*e.g.,* a Delaware corporation becoming an Illinois LLC if such a transaction is authorized by Illinois)

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Illinois Conversion - Different Type of Entity

➔ When the conversion becomes effective:

- The converted entity is the same entity without interruption as the converting entity.
- All property of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment.
- A liability of the converting entity continues as a liability of the converted entity.
- Except as provided by law or the plan of conversion, all of the converting entity's rights, privileges, immunities, powers, and purposes remain in the converted entity.

Illinois Domestication - Different Jurisdiction

➔ The Act also provides that:

- An Illinois entity can become an entity of the same type in a foreign jurisdiction if the domestication is authorized by the foreign jurisdiction. (*e.g.,* an Illinois corporation becoming a Delaware corporation if such a transaction is authorized by Delaware).
- A foreign entity can become an Illinois entity of the same type if the domestication is authorized by the foreign jurisdiction (*e.g.*, a Delaware corporation becoming an Illinois corporation if such a transaction is authorized by Illinois).

Illinois Domestication - Different Jurisdiction

- When a domestication becomes effective:
  - The domesticated entity is the same entity without interruption as the domesticating entity.
  - All property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion or impairment.
  - A liability of the domesticating entity continues as a liability of the domesticated entity.
  - Except as provided by law or the plan of domestication, all of the domesticating entity's rights, privileges, immunities, powers, and purposes remain in the domesticated entity.

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Illinois Conversions & Domestications

- Conversions and domestications generally require that a plan be drafted and approved by the company.
- A statement of conversion or domestication is generally filed with the Secretary of State in form and content as required by statue.

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Tax Consequences Of Conversion

- Generally, moving forward in the progression of entities (from disregarded entity to LLC, from LLC to S corporation) generally results in favorable or manageable tax consequences.
- Moving sideways or backwards (from C corporation to S corporation, which carries built-in-gain tax issues; or from corporate status to a partnership or disregarded entity, which is a liquidation of the company) may create negative tax consequences.

Tax Consequences Of Conversion

- Taxpayers must consider the tax effects of a conversion!
  - Example - reclassification of a C or S corporation to a partnership under the check-the-box regulations is a complete liquidation of the corporation. See Treas. Reg. 301.7701-3(g)(1)(ii) which is generally results in potential double tax (corporate level gain and shareholder gain).
  - Example - the incorporation of a partnership can result in recognized gain if the transferred liabilities exceed the basis of transferred assets under §357(c).

Tax Consequences Of Conversion

- Keep in mind that a check-the-box election to change classification cannot again be changed for 60 months after the effective date of the change.
- In some circumstances, the tax cost of a conversion will outweigh the tax benefits.

Changing Entity Classification

- Treas. Reg. 301.7701-3(g) discusses these conversions including:
  - Partnership electing to be taxed as a corporation.
  - corporation electing to be taxed as a partnership.
  - Single-member corporation electing to be disregarded as an entity for tax purposes
  - Disregarded entity electing to be taxed as an corporation.

Changing Entity Classification

- Elections to change classification is treated as occurring at the start of the day for which election is to be effective.
- Transactions that are deemed to occur as a result of the change in classification are treated as having occurred on the day preceding the day the election is effective.

Changing Entity Classification

- Example – ABC Co., is a service-based repair business which elects to change its classification from corporation to partnership effective 01/01/2019.
  - ABC is deemed to have distributed all its assets to its shareholders and liquidate on 12/31/2018.
  - The shareholders are deemed to have contributed the assets to the newly-formed partnership on 12/31/2018.
  - The shareholders report the liquidating distribution from the corporation on their 2018 tax return.
  - ABC files a final corporation return in 2018; and files an initial partnership return in 2019.

Changing Entity Classification

- To make an entity classification change, file IRS Form 8832.
- File Form 8832 timely! Generally, an election specifying an eligible entity's classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed.

Adobe Acrobat Document

Conversion From LLC To Corporation

- Why would an LLC consider converting to an corporation form of doing business?
  - Retains personal asset protection from debts and judgements against the company.
  - Avoidance of self-employment tax on distributive share of LLC trade or business income.
  - Can offer different classes of stock.
  - Results in lowered corporate tax rate where most earnings will be retained.

Conversion From LLC To Corporation

- A partnership (or LLC taxed as a partnership) can be incorporated under four different alternatives.
- The tax consequences are determined based on the form of how of the transfer occurs.
- Rev. Rul. 84-111 governs as to the "asset-over", "asset-up", or "interests-over" form of conversion.
- Rev. Rul. 2004-59 applies as to state law conversions such as the Illinois Omnibus Act.

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Conversion From LLC To Corporation

- Rev. Rul. 84-111 provides guidance for §351 transfers of 100% of the interests of a partnership.
  - *Assets Over* - a transfer by a partnership (or LLC) of assets to the corporation in exchange for consideration, followed by the liquidation of the entity via distribution of the consideration.
  - *Assets Up* - a distribution of all partnership (or LLC) assets to the partners (or members) in liquidation, followed by a contribution of the assets received to the corporation in exchange for stock of the corporation.
  - *Interests Over* - a transfer of the partnership (or LLC) interests by the partners (or members) personally to the corporation in exchange for stock of the corporation.

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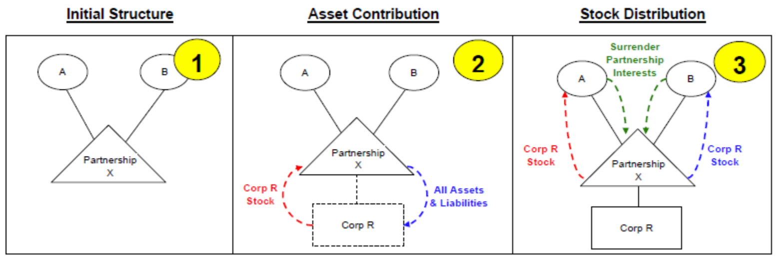
Conversion From LLC To Corporation

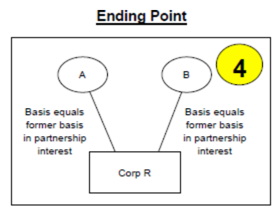
➔ Rev. Rul. 84-111 “Assets-Over”



X transfers all of its assets to Newco R in exchange for all the outstanding stock of R and the assumption by R of X's liabilities. X then terminates by distributing all the stock of R to X's partners prorata.

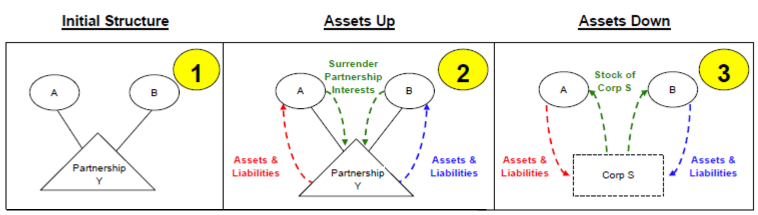
No gain or loss is recognized by X on its transfer of assets to R in exchange for R's stock and the assumption by R of X's liabilities. See §351. Under §362(a), R's basis in the assets received equals the basis to X immediately before their transfer to R. Under §358(a), the basis to X of the stock received from R is the same as the basis to X of the assets transferred to R, reduced by the liabilities assumed by R (which is treated as a payment of money to X under §358(d)). The assumption by R of X's liabilities decreases each partner's share of the partnership liabilities, thus, decreasing the basis of each partner's partnership interest pursuant to §§752 and 733.

On distribution of the stock to X's partners, X terminates. Pursuant to §732(b), the basis of the stock distributed to the partners in liquidation of their partnership interests is, with respect to each partner, equal to the adjusted basis of the partner's interest in the partnership.



Conversion From LLC To Corporation

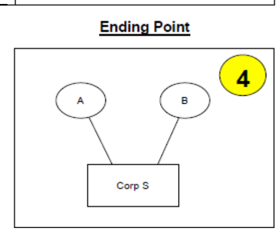
➔ Rev. Rul. 84-111 “Assets-Up”



Y distributes all of its assets and liabilities to its partners prorata. Y terminates. The partners then transfer all the assets received from Y to Newco S in exchange for all the outstanding stock of S and the assumption by S of Y's liabilities that had been assumed by the partners.

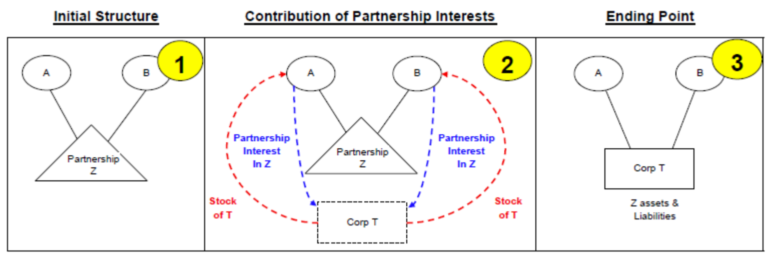
Under §732(b), the basis of the assets (other than money) distributed to the partners in liquidation of their partnership interests in Y is equal to the adjusted basis of the partner's interest in Y, reduced by the money distributed. Under §752, the decrease in Y's liabilities resulting from the transfer to Y's partners is offset by the partners' corresponding assumption of such liabilities so that the net effect on the basis of each partner's interest in Y with respect to the liabilities transferred is zero.

Under §351, no gain or loss is recognized by Y's former partners on the transfer to S in exchange for its stock and the assumption of Y's liabilities, of the assets of Y received by Y's partners in liquidation of Y. Under §358(a), the basis to the former partners of Y in the stock received from S is the same as the §732(b) basis to the former partners of Y in the assets received in liquidation of Y and transferred to S, reduced by the liabilities assumed by S, which assumption is treated as a payment of money to the partners under §358(d). Under §362(a), S's basis in the assets received from Y's former partners equals their basis to the former partners as determined under §732(c) immediately before the transfer to S.



Conversion From LLC To Corporation

- Rev. Rul. 84-111 “Interests Over”



The partners of Z transfer their partnership interests to Newco T in exchange for all the outstanding stock of T. This exchange terminates Z and all of its assets and liabilities became assets and liabilities of T.

Under §351, no gain or loss is recognized by Z's partners on the transfer of the partnership interests to T in exchange for T's stock. On the transfer of the partnership interests to the corporation, Z terminated under §708(b)(1)(A). Under §358(a), the basis to the partners of Z of the stock received from T in exchange for their partnership interests equals the basis of their partnership interests transferred to T, reduced by Z's, liabilities assumed by T, the release from which is treated as a payment of money to Z's partners under sections 752(d) and 358(d).

T's basis for the assets received in the exchange equals the basis of the partners in their partnership interests allocated in accordance with §732(c).

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LLC State Law Conversion To Corporation

- A partnership or LLC (taxed as a partnership) which converts to corporate status under a state statute that does not require an actual transfer of the unincorporated entity’s assets or interests (so-called state law formless conversion statute such as Illinois) is governed by Rev. Rul. 2004-59.
- Rul. 84-111 does not apply to state law formless conversions.

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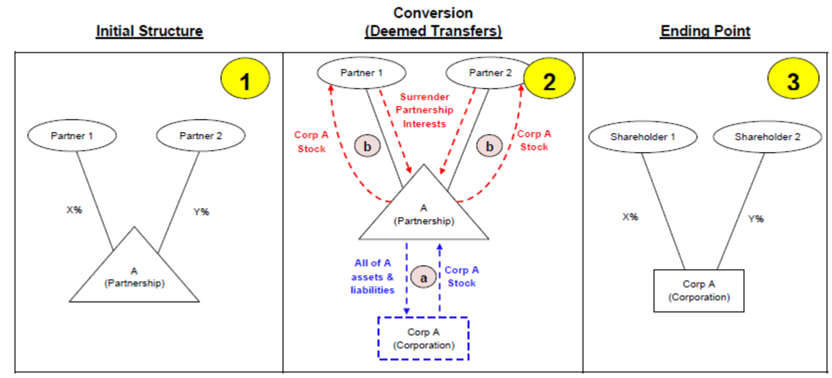
LLC State Law Conversion To Corporation

➔ Rev. Rul. 2004-59



A partnership that converts to a corporation under state law that does not require an actual transfer of assets or interests is treated in the same manner as a partnership that makes an election to be treated as a corporation under Reg. 301.7701-3(c)(1)(i).

Under the conversion, the following is deemed to occur: (a) the partnership contributes all its assets and liabilities to the corporation in exchange for stock in the corporation, and (b) immediately thereafter, the partnership liquidates, distributing the stock of the corporation to its partners.

Conversion From LLC To Corporation

➔ Beware of hidden traps:

- Prior §754 basis adjustments.
- Liabilities in excess of basis issues under §357(c) can create a taxable event.
- §1244 stock loss treatment can be affected.
- Partner (member) outside basis can be adjusted upward or downward than inside partnership (LLC) basis.

§754 Basis Adjustment

- If one or more partners or members acquired an interest by way of purchase or inheritance where a §754 basis adjustment is in effect, the assets-over method will ensure that the adjustment survives as the corporation takes the same basis as they partnership had.

Conversion From LLC To Corporation

- Liabilities in excess of basis issues under §357(c) can create a taxable event.
  - Example – XYZ, LLC, engages in a state law conversion effective 12/31/2018. B/S was:

	FMV	Basis
Cash	10,000	10,000
Accts. Rec.	25,000	-
Inventory	9,000	9,000
Fixed assets	240,000	240,000
Accum. Depr.	(150,000)	(150,000)
Total assets	134,000	109,000
Accts. Pay	40,000	-
Debt	184,000	184,000
Capital	(90,000)	(75,000)
Liabilites & Equity	134,000	109,000

Liabilities in excess of basis results in gain as follows…

Liabilities transferred	224,000	
Excluded liabilities	(40,000)	Accts. Pay
Included liabilities	184,000	
Basis in assets	(109,000)	
Taxable gain	75,000	

§1244 Stock Loss Treatment

- Any partnership incorporation using the "assets-over" approach jeopardizes §1244 stock loss treatment.
- To retain §1244 status for their stock, the partners individually must receive it as original issue stock. See Treas. Reg. 1.1244(a)-1(b). Cannot use a structure in which the stock is first issued to the partnership then subsequently distributed to the partners and retain §1244 status.
- A requirement of §1244 is that the shareholder must be the original shareholder. The fact that the stock was held by the partnership for a (albeit) short transitory time does not appear to be a viable argument.

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§1244 Stock Loss Treatment

- It would appear that a state law conversion governed by Rev. Rul. 2004-59 would arrive at the same conclusion since under Rev. Rul. 2004-59 the partnership is deemed to have contributed all of its assets and liabilities to the corporation in exchange for stock, and immediately thereafter the partnership is deemed to liquidate distribute the stock of the corporation to its partners.

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Corporation Converting To LLC

➔ Why would an corporation consider converting to an LLC form of doing business?

- Avoidance of double taxation—particularly if contemplating a sale at some future date.
- Retained limited liability protection.
- Unused net operating loss or credit carryovers.
- Can't be an S corporation (e.g., ineligible shareholder).
- Ability to access the QBI deduction under §199A.

Corporation Converting To LLC

➔ As corporation electing to a partnership is deemed to have liquidated by distributing all of its assets and liabilities to the shareholders. The shareholders are then deemed to have contributed all of the assets and labilities to the partnership. See Treas. Reg. 301.7701-3(g)(1)(ii).

Corporation Converting To LLC

- Liquidation of a corporation is generally a taxable event for both corporation and shareholders.
  - §336(a) states that a liquidating corporation recognizes gain on the distribution of appreciated property as if the corporation had sold each of its assets at FMV.
  - §331(a) provides that the corporation's shareholder(s) also recognize gain or loss on the distribution equal to the FMV of the distribution received less basis in the shareholder's stock.

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Corporation Converting To LLC

- Cash basis accounts receivable. Basis equals zero yet the receivables have value. Will we have to recognize the ordinary income on a conversion to LLC status? The answer is yes!
- Consider the effect of company goodwill. The corporation may have significant goodwill which could increase the gain to be recognized on the conversion. Particularly true for successful service-oriented businesses with employees.
- For capital intensive companies, depreciation recapture can be significant.

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Corporation Converting To LLC

→ Avoidance of §336(a) corporate-level gain can be somewhat mitigated with salary and fringe benefits but as a profitable corporation matures, it becomes more difficult to "zero out" corporate taxable income through shifting devices such as salaries, fringe benefits, and the like.

Disregarded Entity To An Corporation

→ Why would a disregarded entity desire to be taxed as an corporation?
- Obtain personal asset protection from debts and judgements against the company.
- Avoidance of self-employment tax on self-employment income (sole proprietorship). S corporation distributive share is not subject to SE tax (but watch for requirement to pay reasonable compensation).
- Lowered C corporate tax rate particularly where earnings will be retained.

Disregarded Entity To An Corporation

- The owner of a disregarded entity that elects to be classified as an corporation is deemed to have contributed all the assets and liabilities of that entity to the corporation in exchange for stock of the corporation. Treas. Reg. 301.7701-3(g)(1)(iv).
- This is a §351 transfer to a controlled corporation. Generally tax-free.
- Beware of liabilities in excess of basis in assets transferred.

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New FEIN's

- Do you need a new FEIN?

Corporations

You **will be** required to obtain a new EIN if any of the following statements are true.

- A corporation receives a new charter from the secretary of state.
- You are a subsidiary of a corporation using the parent's EIN or you become a subsidiary of a corporation.
- You change to a partnership or a sole proprietorship.
- A new corporation is created after a statutory merger.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- You are a division of a corporation.
- The surviving corporation uses the existing EIN after a corporate merger.
- A corporation declares bankruptcy.
- The corporate name or location changes.
- A corporation chooses to be taxed as an S corporation.
- Reorganization of a corporation changes only the identity or place.
- Conversion at the state level with business structure remaining unchanged.

Partnerships

You **will be** required to obtain a new EIN if any of the following statements are true.

- You incorporate.
- Your partnership is taken over by one of the partners and is operated as a sole proprietorship.
- You end an old partnership and begin a new one.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- The partnership declares bankruptcy.
- The partnership name changes.
- You change the location of the partnership or add other locations.
- A new partnership is formed as a result of the termination of a partnership under IRC section 708(b)(1)(B).
- 50 percent or more of the ownership of the partnership (measured by interests in capital and profits) changes hands within a twelve-month period (terminated partnerships under Reg. 301.6109-1).

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New FEIN's

➔ Do you need a new FEIN?

Sole Proprietors

You **will be** required to obtain a new EIN if any of the following statements are true.

- You are subject to a bankruptcy proceeding.
- You incorporate.
- You take in partners and operate as a partnership.
- You purchase or inherit an existing business that you operate as a sole proprietorship.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- You change the name of your business.
- You change your location and/or add other locations.
- You operate multiple businesses.

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Business Law Section Council – LEGAL UPDATE – January 2019

Case Law Update

Crystal Lake Limited Partnership v. Baird & Warner Residential Sales, 2018 IL App (2d) 170714 (Opinion Filed November 30, 2018)

HOLDING: The Court reversed the portion of the underlying judgment that granted the defendant's motion for a JNOV and reinstated the jury's holdover damage award against a tenant that left the subject premises at the end of the leases in question and also vacated the underlying award of attorney's fees in favor of the plaintiff, remanding that claim for further proceedings to determine the proper (and likely greater) attorneys' fees award.

The plaintiff, Crystal Lake Limited Partnership ("CLLP"), filed suit against Baird and Warner Residential Sales ("B&W") for breach of commercial leases for an office in a shopping center. B&W leased the subject premises for approximately 21 years, during which time it made substantial changes to the premises, including the demolition of devising walls that previously separated 4 discrete sections of the overall premises. B&W notified CLLP of its intent to leave the premises in 2009 at the conclusion of its leases as a part of the consolidation of its offices during tough times in the real estate market. Based upon a provision in the CLLP-B&W leases requiring the tenant "to restore the premises to the condition they were in before the lease commenced," CLLP demanded that B&W restore the premises to its pre-lease condition that consisted of 4 separate spaces, each with its own bathroom and utilities. B&W refused to honor that demand, but vacated the premises at the conclusion of its leases on May 31, 2009, returning the keys less than 30 days later. Thereafter, CLLP sought new tenants for the premises but, in addition to its restoration demand, also demanded from B&W an additional year's rent under the CLLP-B&W leases' holdover provision. Ultimately, CLLP re-rented a portion of the B&W premises to one new tenant in April of 2010 and another portion to another new tenant in 2012. B&W never restored the premises to its condition prior to the CLLP-B&W leases.

The case went to a jury trial and CLLP not only sought damages for B&W's failure to restore the premises, but also additional damages for B&W's alleged holdover. The jury awarded over $110,000 for each of these claims, for a total jury award of $224,930.36 in CLLP's favor. Both sides filed post-trial motions. B&W sought a JNOV of the holdover award, contending that there was no evidence that it had possession or control after it returned the premises to B&W and that the jury was improperly instructed that the failure to restore the premises constituted a holdover. The trial court granted B&W's motion with respect to the holdover award, conditionally ruling that B&W was entitled to a new trial on that claim. (B&W also initially challenged the restoration award, but after the trial court granted a new trial on damages, that award was later modified and increased (at B&W's request), and the principal amount of the restoration award was not at issue on appeal.) CLLP also filed post-trial motions for sanctions, for the award of pre-judgment interest and for attorneys' fees. CLLP's motion for sanctions was denied, the trial court awarded CLLP $70,000 of its $500,000 in attorneys' fees, and the trial court denied CLLP pre-judgment interest. CLLP appealed the trial court's JNOV with respect to its holdover claim and the trial court's rulings with respect to its post-trial motions.

The appellate court reversed the JNOV on CLLP's holdover award, reversed the trial court's conditional ruling that B&W was entitled to a new trial on that claim and reinstated the jury's holdover claim award. The appellate court found that there was at least some evidence from which a jury could decide that B&W constructively controlled the premises because it initially agreed to CLLP's demand to restore the premises but insisted that it do so with its own plans and with its own contractor, a firm B&W instructed to obtain a building permit for the premises without CLLP's knowledge. The appellate court also found that the jury was properly instructed that constructive possession of premises can constitute a holdover tenancy.

The appellate court affirmed the denial of prejudgment interest, finding that the damages here were not fixed or easily computed to warrant the grant of prejudgment interest. The court also affirmed the denial of CLLP's motion for sanctions. CLLP claimed that there was no basis for B&W's motion for a new trial, particularly citing an evasive discovery response by B&W, but the appellate court did not find that an evasive interrogatory answer was a sufficient basis for sanctions, particularly since the motion for the new trial was granted. Finally, the appellate court reversed the trial court's award of $70,000 of CLLP's $500,000 in attorneys' fees, remanding the case for further proceedings concerning the correct amount of the award. The Court found that an attorneys' fee award may be reasonable, even if the amount of fees is disproportionate to the award the client obtains, though proportionality may be considered along with the following other factors: the skill of the attorney employed, the nature of the cause, the novelty and difficulty of the issues, the amount and importance of the subject matter of the suit, the degree of responsibility of the management of the case, the time and labor required, and the usual and customary charges for similar work. In the case at bar, the trial court improperly considered proportionality alone. The court noted that there was no question that CLLP was the prevailing party under the contractual fee-shifting provision at issue.

The Takiff Properties Group Ltd. #2 v. GTI Life, Inc., 2018 IL App (1st) 171477 (Opinion Filed December 26, 2018)

HOLDING: The Court affirmed the court's judgment in favor of the plaintiff landlord for damages from a tenant that abandoned the subject premises, finding that the commercial tenant had contractually waived the statutory mitigation affirmative defense.

The Plaintiff rented the subject premises to a commercial tenant via a lease that was extended through October of 2014. The lease in question included language that provided that, if the tenant abandons the premises, the landlord "may but need not relet the premises . . . for the account of the Lessee." The tenant alleged that it abandoned the premises in March of 2014 and the landlord made no effort to lease the premises until the summer of 2014. Testimony was also offered at trial that the premises were re-rented in August of 2014, but no rent was charged until the rental period in the subject lease expired. The tenant argued that the landlord could not recover because it failed to mitigate its damages. The trial court entered a judgment in favor of the Plaintiff for $21,616.30 (a few thousand in excess of the total amount sought in the complaint) and found that the tenant contractually waived the landlord's failure to mitigate.

On appeal, the tenant argued that the landlord failed to present evidence of mitigation, the landlord waived its right to rely on the contractual provision excusing it from reletting and the landlord's statutory duty to mitigate could not be contracted away.

735 ILCS 5/9-213.1 provides that "after January 1, 1984, a landlord or his agent shall take reasonable measures to mitigate the damages recoverable against a defaulting lessee." The court found that this is a provision whereby a landlord's recovery is simply reduced by the amount of loss he could have avoided incurring, an affirmative defense the defendant must plead and prove. Reviewing the legislative history of this provision, the court found that the intent was that a landlord has nothing more than the same duty to mitigate damages that other contracting parties have and the court found nothing to indicate that this affirmative defense couldn't be waived, noting that there was nothing to indicate a disparity in bargaining power between these commercial entities.

Submitted by: Desmond Curran, a partner with Sullivan Hincks & Conway in Oak Brook

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