

6119

2009-2010 Regular Sessions

I N S E N A T E

August 6, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the limited liability company law, in relation to
addresses for limited liability companies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (e) of section 203 of the limited liability
2 company law, as added by chapter 470 of the laws of 1997, is amended to
3 read as follows:
4 (e) The articles of organization of a limited liability company shall
5 set forth:
6 (1) the name of the limited liability company;
7 (1-A) THE NAMES AND ADDRESSES OF EACH MEMBER OF THE LIMITED LIABILITY
8 COMPANY ALONG WITH A DESCRIPTION OF THE DUTIES AND RESPONSIBILITIES THAT
9 EACH MEMBER OF THE LIMITED LIABILITY COMPANY HAS WITH REGARDS TO THE
10 LIMITED LIABILITY COMPANY. A POST OFFICE BOX IS NOT AN ACCEPTABLE
11 ADDRESS; THE ADDRESS MUST BE FOR EACH MEMBER'S DWELLING PLACE OR ACTUAL
12 PLACE OF BUSINESS;
13 (2) the county within this state in which the office of the limited
14 liability company is to be located or if the limited liability company
15 shall maintain more than one office in this state, the county in which
16 the principal office of the limited liability company is to be located;
17 (2-A) THE ACTUAL ADDRESS FOR ALL OFFICES OF THE LIMITED LIABILITY
18 COMPANY WHEREVER LOCATED, INCLUDING FOR OFFICES THAT ARE LOCATED OUTSIDE
19 THE STATE OF NEW YORK. A POST OFFICE BOX IS NOT AN ACCEPTABLE ADDRESS;
20 THE ADDRESS MUST BE FOR THE OFFICE'S ACTUAL PHYSICAL LOCATION;
21 (3) if the limited liability company is to have a specific date of
22 dissolution in addition to the events of dissolution set forth in
23 section seven hundred one of this chapter, the latest date on which the
24 limited liability company is to dissolve;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (4) a designation of the secretary of state as agent of the limited
2 liability company upon whom process against it may be served and the
3 [post office] NAME OF THE MEMBER AND address within or without this
4 state to which the secretary of state shall mail a copy of any process
5 against the limited liability company served upon him or her. A POST
6 OFFICE BOX IS NOT AN ACCEPTABLE ADDRESS; THE ADDRESS SHALL BE FOR THE
7 REGISTERED AGENT'S DWELLING PLACE OR THE ACTUAL PLACE OF BUSINESS;

8 (5) if the limited liability company is to have a registered agent,
9 its name and address within this state and a statement that the regis-
10 tered agent is to be the agent of the limited liability company upon
11 whom process against it may be served. A POST OFFICE BOX IS NOT AN
12 ACCEPTABLE ADDRESS; THE ADDRESS SHALL BE FOR THE REGISTERED AGENT'S
13 DWELLING PLACE OR THE ACTUAL PLACE OF BUSINESS;

14 (5-A) IF THERE IS NO REGISTERED AGENT DESIGNATED FOR SERVICE OF PROC-
15 ESS AS PROVIDED IN PARAGRAPH FIVE OF THIS SUBDIVISION, THE ARTICLE OF
16 ORGANIZATION SHALL DESIGNATE ONE OR MORE MEMBERS FOR THE SERVICE OF
17 PROCESS AND SPECIFY THE STREET ADDRESS OF SUCH MEMBER OR MEMBERS FOR
18 PURPOSES OF SERVICE OF PROCESS. A POST OFFICE BOX IS NOT AN ACCEPTABLE
19 ADDRESS; THE ADDRESS MUST BE FOR THE APPLICABLE MEMBER OR MEMBERS'
20 DWELLING PLACE OR ACTUAL PLACE OF BUSINESS;

21 (6) if all or specified members are to be liable in their capacity as
22 members for all or specified debts, obligations or liabilities of the
23 limited liability company as authorized pursuant to section six hundred
24 nine of this chapter, a statement that all or specified members are so
25 liable for such debts, obligations or liabilities in their capacity as
26 members of the limited liability company as authorized pursuant to
27 section six hundred nine of this chapter; and

28 (7) any other provisions, not inconsistent with law, that the members
29 elect to include in the articles or organization for the regulation of
30 the internal affairs of the limited liability company, including, but
31 not limited to, (A) the business purpose for which the limited liability
32 company is formed, (B) a statement of whether there are limitations on
33 the authority of members or managers or a class or classes thereof to
34 bind the limited liability company and (C) any provisions that are
35 required or permitted to be included in the operating agreement of the
36 limited liability company pursuant to section four hundred seventeen of
37 this chapter.

38 S 2. Subdivision (d) of section 211 of the limited liability company
39 law is amended to read as follows:

40 (d) In particular, but without limiting the general power of amendment
41 as stated in subdivision (b) of this section, a limited liability compa-
42 ny shall amend its articles of organization no later than ninety days
43 after the happening of any of the following events:

44 (1) a change in the name of the limited liability company;

45 (1-A) A CHANGE IN THE MEMBERS OF THE LIMITED LIABILITY COMPANY;

46 (1-B) A CHANGE IN THE NAME, ADDRESS, DUTIES AND/OR RESPONSIBILITIES OF
47 ANY OF THE MEMBERS OF THE LIMITED LIABILITY COMPANY;

48 (2) a change in the county within this state in which the office of
49 the limited liability company is to be located;

50 (2-A) A CHANGE IN THE ADDRESSES OF THE OFFICES FOR THE LIMITED LIABIL-
51 ITY COMPANY, INCLUDING, BUT NOT LIMITED TO, WHERE THE CHANGE IS THE
52 CREATING OR CLOSING OF OFFICE LOCATIONS;

53 (3) a change in the latest date, if any, on which the limited liabil-
54 ity company is to dissolve;

55 (4) the continuation of the limited liability company under section
56 seven hundred one of this chapter after an event of dissolution;

(5) a change in the name or street address of its registered agent in the state if such change is made other than pursuant to section three hundred two of this chapter;

(6) a change in the [post office] NAME OR STREET address to which the secretary of state shall mail a copy of any process against the limited liability company served upon him or her if such change is made other than pursuant to section three hundred one of this chapter;

(7) a change in whether the limited liability company is to be managed by one or more members of a class or classes of members or by one or more managers or a class or classes of managers;

(8) the discovery of a materially false or inaccurate statement in the articles of organization; and

(9) the decision to change any other statement in the articles of organization.

S 3. Subdivision (b) of section 213 of the limited liability company law, the opening paragraph as amended by chapter 643 of the laws of 1995, is amended to read as follows:

(b) Notwithstanding subdivision (a) of this section, unless the operating agreement provides otherwise (including, but not limited to, by restricting or enlarging the management powers or responsibilities of one or more managers or classes of managers), if the limited liability company is managed by one or more managers then any of the following amendments may be authorized by a majority of such managers:

(1) to change the name or street address of the registered agent, if any, of the limited liability company in the state;

(2) to change the [post office] NAME OR STREET address to which the secretary of state shall mail a copy of any process against the limited liability company served upon him or her; [and]

(3) to correct any error in the articles of organization pursuant to section two hundred twelve of this article[.]; AND

(4) TO CHANGE THE ADDRESSES OF THE OFFICES FOR THE LIMITED LIABILITY COMPANY, INCLUDING, BUT NOT LIMITED TO, WHERE THE CHANGE IS THE CREATING OR CLOSING OF OFFICE LOCATIONS.

S 4. Section 301 of the limited liability company law, subdivision (e) as amended by chapter 643 of the laws of 1995, is amended to read as follows:

S 301. Statutory designation of secretary of state as agent for service of process. (a) The secretary of state shall be the agent of every domestic limited liability company that has filed with the department of state articles of organization making such designation and every foreign limited liability company upon which process may be served pursuant to this chapter.

(b) No domestic or foreign limited liability company may be formed or authorized to do business in this state under this chapter unless its articles of organization or application for authority designates the secretary of state as such agent.

(c) Any designated [post office] LIMITED LIABILITY COMPANY MEMBER AND address to which the secretary of state shall mail a copy of process served upon him or her as agent of a domestic limited liability company or a foreign limited liability company shall continue until the filing of a certificate under this chapter directing the mailing to a different [post office] LIMITED LIABILITY COMPANY MEMBER AND address.

[(e)] (D) Every limited liability company to which this chapter applies, shall biennially in the calendar month during which its articles of organization or application for authority were filed, or effective date thereof if stated, file on forms prescribed by the secretary

1 of state, a statement setting forth the [post office] NAME OF THE MEMBER
2 OF THE LIMITED LIABILITY COMPANY AND HIS OR HER address within or with-
3 out this state to which the secretary of state shall mail a copy of any
4 process accepted against it served upon him or her. Such address shall
5 supersede any previous address on file with the department of state for
6 this purpose. A POST OFFICE BOX IS NOT AN ACCEPTABLE ADDRESS; THE
7 ADDRESS SHALL BE FOR THE MEMBER'S DWELLING PLACE OR ACTUAL PLACE OF
8 BUSINESS.
9 S 5. This act shall take effect on the one hundred twentieth day after
10 it shall have become a law.