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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. MAGNARELLI -- Multi-Sponsored by -- M. of A.
PEOPLES-STOKES, REILLY -- read once and referred to the Committee on
Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to providing
that the surviving business entity in the case of a merger between a
professional service corporation and a professional service limited
liability company may be a professional service limited liability
company

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

1 Section 1. Section 1501 of the business corporation law, as added by
2 chapter 974 of the laws of 1970, is amended to read as follows:
3 S 1501. Definitions.
4 As used in this article, unless the context otherwise requires, the
5 term: (a) "licensing authority" means the regents of the university of
6 the state of New York or the state education department, as the case may
7 be, in the case of all professions licensed under title eight of the
8 education law, and the appropriate appellate division of the supreme
9 court in the case of the profession of law.
10 (b) "Profession" includes any practice as an attorney and counselor-
11 at-law, or as a licensed physician, and those occupations designated in
12 title eight of the education law.
13 (c) "Professional service" means any type of service to the public
14 which may be lawfully rendered by a member of a profession within the
15 purview of his OR HER profession.
16 (d) "Professional service corporation" means a corporation organized
17 under this article.
18 (e) "Officer" does not include the secretary or an assistant secretary
19 of a corporation having only one shareholder.

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

LBD03146-01-1

1 (F) "OTHER BUSINESS ENTITY" MEANS ANY PERSON OTHER THAN A NATURAL
2 PERSON, GENERAL PARTNERSHIP OR A DOMESTIC OR FOREIGN BUSINESS CORPO-
3 RATION, AND INCLUDES A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
4 FORMED PURSUANT TO THE PROVISIONS OF THE NEW YORK LIMITED LIABILITY
5 COMPANY LAW.

6 S 2. Section 1516 of the business corporation law, as amended by chap-
7 ter 851 of the laws of 1992, is amended to read as follows:

8 S 1516. Corporate mergers, consolidations and other reorganizations.

9 (A) Notwithstanding any inconsistent provision of this article, a
10 professional service corporation, pursuant to the provisions of article
11 nine of this chapter, may be merged or consolidated with another corpo-
12 ration formed pursuant to the provisions of this chapter or with a
13 corporation authorized and registered to practice the same profession
14 pursuant to the applicable provisions of subdivision six of section
15 seventy-two hundred nine of the education law (engineer or land
16 surveyor) or subdivision four of section seventy-three hundred seven of
17 the education law (architect) of article one hundred forty-five of the
18 education law, or with a foreign corporation, OR OTHER BUSINESS ENTITY
19 PRACTICING THE SAME PROFESSION OR PROFESSIONS IN THIS STATE OR THE STATE
20 OF ITS FORMATION, or may be otherwise reorganized, provided that the
21 corporation which survives or which is formed pursuant thereto is a
22 professional service corporation, A PROFESSIONAL SERVICE LIMITED LIABIL-
23 ITY COMPANY or a foreign professional service corporation practicing the
24 same profession or professions in this state or the state of incorpo-
25 ration or, if one of the original corporations is authorized to practice
26 pursuant to the provisions of either subdivision six of section [seven
27 thousand two] SEVENTY-TWO hundred nine or subdivision four of section
28 [seven thousand three] SEVENTY-THREE hundred seven, a corporation
29 authorized and registered to practice the same profession pursuant to
30 the applicable provisions of subdivision six of section seventy-two
31 hundred nine of the education law (engineer or land surveyor) or subdi-
32 vision four of section seventy-three hundred seven of the education law
33 (architect) of article one hundred forty-five of the education law.

34 [The] (B) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL CORPO-
35 RATION, THE restrictions on the issuance, transfer or sale of shares of
36 a professional service corporation shall be suspended for a period not
37 exceeding thirty days with respect to any issuance, transfer or sale of
38 shares made pursuant to such merger, consolidation or reorganization,
39 provided that: (i) no person who would not be eligible to be a share-
40 holder in the absence of this section shall vote the shares of or
41 receive any distribution from such corporation; (ii) after such merger,
42 consolidation or reorganization, any professional service corporation
43 which survives or which is created thereby shall be subject to all of
44 the provisions of this article[,]; and (iii) shares thereafter only may
45 be held by persons who are eligible to receive shares of such profes-
46 sional service corporation or such other corporation authorized and
47 registered to practice the same profession pursuant to the applicable
48 provisions of subdivision six of section seventy-two hundred nine of the
49 education law (engineer or land surveyor) or subdivision four of section
50 seventy-three hundred seven of the education law (architect) of article
51 one hundred forty-five of the education law, which survives. Nothing
52 herein contained shall be construed as permitting the practice of a
53 profession in this state by a corporation which is not incorporated
54 pursuant to the provisions of this article or authorized to do business
55 in this state pursuant to the provisions of article fifteen-A of this
56 chapter or authorized and registered to practice a profession pursuant

1 to the applicable provisions of article one hundred forty-five of the
2 education law. For the purposes of this section, other reorganizations
3 shall be limited to those reorganizations defined in paragraph one of
4 subsection (a) of section three hundred sixty-eight of the internal
5 revenue code.

6 (C) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL SERVICE LIMITED
7 LIABILITY COMPANY, THE RESTRICTIONS ON THE ISSUANCE, TRANSFER OR SALE OF
8 MEMBERSHIP INTERESTS OF A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
9 OTHER THAN THE REQUIREMENTS OF THE FIRST TWO SENTENCES OF SUBDIVISION
10 (C) OF SECTION TWELVE HUNDRED ELEVEN OF THE LIMITED LIABILITY COMPANY
11 LAW, SHALL BE SUSPENDED FOR A PERIOD NOT EXCEEDING THIRTY DAYS WITH
12 RESPECT TO ANY ISSUANCE, TRANSFER OR SALE OF MEMBERSHIP INTERESTS MADE
13 PURSUANT TO SUCH MERGER OR CONSOLIDATION, PROVIDED THAT: (I) NO PERSON
14 OR BUSINESS ENTITY WHO WOULD NOT BE ELIGIBLE TO BE A MEMBER IN THE
15 ABSENCE OF THIS SECTION SHALL VOTE OR RECEIVE ANY DISTRIBUTION FROM SUCH
16 LIMITED LIABILITY COMPANY; (II) AFTER SUCH MERGER OR CONSOLIDATION, ANY
17 PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY THAT SURVIVES OR THAT IS
18 CREATED THEREBY SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE LIMITED
19 LIABILITY COMPANY LAW; AND (III) MEMBERSHIP INTERESTS THEREAFTER MAY BE
20 HELD ONLY BY PERSONS OR BUSINESS ENTITIES WHO ARE ELIGIBLE TO BE A
21 MEMBER OF SUCH PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY. NOTHING
22 HEREIN CONTAINED SHALL BE CONSTRUED AS PERMITTING THE PRACTICE OF A
23 PROFESSION IN THIS STATE BY A LIMITED LIABILITY COMPANY THAT IS NOT
24 FORMED PURSUANT TO THE PROVISIONS OF THE LIMITED LIABILITY COMPANY LAW
25 OR AUTHORIZED TO DO BUSINESS IN THE STATE PURSUANT TO THE PROVISIONS OF
26 ARTICLE THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW.

27 S 3. This act shall take effect immediately.