

NEW ACT GIVES OHIO LLCs TOOLS TO CUT OFF CLAIMS

OCTOBER 2021

Ohio's current limited liability company statute does not provide any means for an LLC to cut off claims by others after the company dissolves. The statute requires the dissolved LLC to pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations that are known to the company and all claims and obligations that are known to the company but where the claimant or obligee is unknown. Absent an express settlement between the LLC and a creditor or claimant, there could be a cloud hanging over the LLC until any applicable statute of limitations has expired. Beginning January 1, 2022, an Ohio LLC will have statutory tools to allow it to force creditors and claimants to resolve matters within certain timeframes.

A claimant who is given notice is barred from bringing a claim if the claimant does not deliver the claim to the dissolved company by the deadline. If the dissolved company rejects a claim, the claimant is barred if it does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice. This procedure applies even to claims where the amount of the claim is not yet determined, but it does not apply to a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

Barring of Other Claims. Under the new Act, a dissolved LLC may publish notice of its dissolution and request that persons with claims against the dissolved company present them in accordance with the notice. The notice must be posted on the company's website, if it has one, and must be provided to the Ohio Secretary of State for posting on its website. The notice must describe the information that must be included in a claim, provide a mailing address to which the claim must be sent, and state that a claim against the dissolved company will be barred unless a proceeding to enforce the claim is commenced within two years after the posting of the notice. A claim by any of the following persons will be barred two years after publication of the notice, unless it is barred earlier, such as by expiration of the statute of limitations:

- A claimant who was not given direct notice as described above with respect to known claims;
- A claimant whose claim was timely sent to the dissolved company but not acted on by it; and
- A claimant whose claim is contingent at the effective date of the dissolution of the company or is based on an event occurring after the effective date of the company's dissolution.

Determination by a Court. If a dissolved LLC has posted the notice on its website (if it has one) and provided it to the Ohio Secretary of State, then it has the right to file an application with the appropriate court for a determination of the amount and form of security to be provided for payment of claims that are contingent, claims that have not been made known to the dissolved company, and claims that are based on an event occurring after the effective date of the dissolution of the LLC but that, based on the facts known to the LLC, are reasonably estimated to arise after the effective date of the dissolution. If the court sets the terms and amount of security for a claim and the company provides that security, then that claim is satisfied and cannot be enforced against the company or a person owning a membership interest to whom assets have been distributed by the company after the effective date of the dissolution.

This Client Advisory is part of a series highlighting different features of the Ohio LLC Act that goes into effect on January 1, 2022. For other content regarding the Act, click [here](#).

Previously Dissolved LLCs. The new Act, when it becomes operative, will apply not only to newly formed LLCs but also to ones that existed before the new Act. The procedures described above are not limited to LLCs formed after a certain date or dissolved after a certain date. It appears then that an LLC that was previously dissolved without the ability to use these new procedures could use them after January 1, 2022 with the same effect as for new LLCs. The way in which the Ohio Secretary of State provides for the required website posting may affect whether this possibility is available. The desirability of using one or all of these procedures will depend on the confidence the dissolved LLC has that it has already satisfied possible claims.

Drafting Issues and Key Takeaways. The procedures described above are available as a matter of law under the new Act to LLCs formed either before or after the new law goes into effect and do not require that the LLC address them in its operating agreement. It would be prudent, however, for members of any existing LLC to review their operating agreement and make sure that it does not contain any language that could be interpreted to mean that the LLC will not follow procedures like those described above. The new procedures are optional, so members who will not control how such matters are handled after dissolution may want to request that the operating agreement be amended to require that the new procedures be followed.

Additional Information

For more information, please contact:

- **[Glenn E. Morrival](mailto:glenn.morrical@tuckerellis.com)** | 216.696.3431 | glenn.morrical@tuckerellis.com
- **[Ludgy A. LaRochelle](mailto:ludgy.larochelle@tuckerellis.com)** | 216.696.4732 | ludgy.larochelle@tuckerellis.com
- **[Daniel L. Schiau II](mailto:daniel.schiau@tuckerellis.com)** | 216.696.3892 | daniel.schiau@tuckerellis.com

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.

©2021 Tucker Ellis LLP. All rights reserved.