

Business Divorce: Ridding Yourself of a Troublesome Co-Member Without Losing Your Business

By Roy Niedermayer

After several years of harmony, business disputes have now arisen over management and financial issues between you and the co-owner of your limited liability company (LLC). You don't want to dissolve the business; you want to continue, just without your troublesome co-owner. Is there a way you can do this without destroying the business by dissolving and winding up your LLC with all its accompanying loss of value and goodwill?

Well, if you are fortunate enough to have a District of Columbia limited liability company or governed by the laws of the District of Columbia, you may have a way out. Under a unique District of Columbia LLC statute, you can take court action to force a dissociation of your co-owner from the business without dissolution and carry on without her. D.C. Code §29 – 806.02 (5) applicable to LLCs permits a court to order a member's dissociation from a limited liability company if he has

(A) engaged in wrongful conduct adversely and materially affecting the company's activities and affairs;

(B) willfully or persistently committed material breaches of the operating agreement or her duties or obligations as a member; or

(C) engaged in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.

Even if your co-owner has only threatened to do any of these things, you can pursue this remedy. If a court finds she has not yet done but will do these acts, the court still has the power to order dissociation

One caveat, though. Even if the court finds that any of the events in §29 – 806.02 (5) (A)-(C) have taken or will take place, dissociation is not mandatory. Recently the District of Columbia Court of Appeals in *Reese v. Newman*, D.C.C.A. No. 14-C V-283 (decided February 11, 2016) held that if your co-owner countersuits and seeks dissolution and a winding up, and the judge or jury finds that the (5) (A)-(C) grounds exist for both dissociation or dissolution exist under §29 – 806.02 (5), then the judge has the discretion to order either dissociation or dissolution depending on a consideration of all the facts and equities. Nevertheless, the dissociation remedy is useful under the right set of facts.