

Article 7.

Foreign LLCs.

Part 1. Certificate of Authority.

**§ 57D-7-01. Authority to transact business.**

(a) A foreign LLC may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Without excluding other activities that may not constitute transacting business in this State, a foreign LLC is not considered to be transacting business in this State for the purposes of this Chapter by reason of conducting in this State any one or more of the following activities:

- (1) Maintaining or defending any proceeding or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its members, managers, or other company officials or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts or borrowing money in this State, with or without providing security for repayment or other performance and without regard to the frequency of such transactions.
- (4) Maintaining offices or agencies for the exchange or other transfer and registration of all or any class or portion of its membership or other equity or beneficial ownership interests or securities, or appointing and maintaining trustees or depositories with relation to its membership or other equity or beneficial ownership interests or securities.
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance to be made outside of the territory of this State to become binding contracts.
- (6) Making or investing in loans with or without security, including servicing of mortgages or deeds of trust through independent agencies within the territory of this State, conducting foreclosure proceedings and selling or acquiring property in foreclosure sales, and managing or renting property acquired in foreclosure sales in connection with and in furtherance of efforts to sell and otherwise liquidate such property, provided no office or agency of the foreign LLC is maintained in this State.
- (7) Taking security for or collecting debts due the foreign LLC or enforcing any rights the foreign LLC may have in property subject to or otherwise providing security with respect to the repayment or other performance of the debt obligations.
- (8) Transacting business in interstate commerce.
- (9) Conducting an isolated transaction completed within a period of six months but not repeated transactions of a similar nature.
- (10) Selling property or services through independent contractors.
- (11) Owning real or personal property. (2013-157, s. 2.)

**§ 57D-7-02. Consequences of transacting business without authority.**

(a) No foreign LLC transacting business in this State without permission obtained through a certificate of authority may maintain any proceeding in any court of this State unless the foreign

LLC has obtained a certificate of authority prior to trial. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) A foreign LLC failing to obtain a certificate of authority as required by this Chapter is liable to this State for the years, including any partial year, during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes that would have been imposed by law on the foreign LLC had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign LLC is liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year, including any partial year it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due this State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Notwithstanding subsection (a) of this section, the failure of a foreign LLC to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this State.

(d) The Secretary of State shall require every foreign LLC transacting business in this State to comply with the provisions of this Chapter. The Secretary of State may conduct such investigations as may be necessary to ascertain compliance by foreign LLCs with this Chapter. (2013-157, s. 2.)

#### **§ 57D-7-03. Application for certificate of authority.**

(a) A foreign LLC may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must provide the following information:

- (1) The name of the foreign LLC and, if different, a name that satisfies the requirements of Article 3 of Chapter 55D of the General Statutes.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The street address, and the mailing address if different from the street address, of its principal office, if any, and the county in which the principal office, if any, is located.
- (4) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office.
- (5) The names, titles, and business addresses of the foreign LLC's principal company officials.

(b) A foreign LLC shall deliver with the completed application for the certificate of authority a certificate of existence or a document of similar import duly authenticated by the Secretary of State or other official having custody of limited liability company records in the jurisdiction under whose law it is organized.

(c) If the Secretary of State finds that the application conforms to law, the Secretary of State when all taxes, fees, and other payments have been tendered as prescribed in this Chapter, shall do the following:

- (1) File the application and the certificate of existence or a document of similar import as described in subsection (b) of this section, as provided in G.S. 55D-15.

- (2) Issue a certificate of authority to transact business in this State to which the Secretary of State shall affix the exact or conformed copy of the application.
- (3) Send to the foreign LLC or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto. (2013-157, s. 2.)

**§ 57D-7-04. Amended certificate of authority.**

(a) A foreign LLC authorized to transact business in this State shall obtain an amended certificate of authority from the Secretary of State if it changes either of the following:

- (1) Its name.
- (2) The jurisdiction of its organization.

(b) A foreign LLC may apply for an amended certificate of authority by delivering an application to the Secretary of State for filing that sets forth the following:

- (1) The name of the foreign LLC and if different the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The date it was originally authorized to transact business in this State.
- (4) A statement of the change or changes being made.

(c) Except for the content of the application, the requirements of G.S. 57D-7-03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section. (2013-157, s. 2.)

**§ 57D-7-05. Effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign LLC to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this Chapter. A foreign LLC may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of that person's death only in accordance with applicable provisions of Article 24 of Chapter 53 of the General Statutes.

(b) A foreign LLC qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4).

(c) Except as otherwise provided by this Chapter, a foreign LLC with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, an LLC of like character. (2013-157, s. 2.)

**§ 57D-7-06. Registered office and registered agent of foreign LLC.**

Each foreign LLC authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article. (2013-157, s. 2.)

**§ 57D-7-07:** Reserved for future codification purposes.

§ 57D-7-08: Reserved for future codification purposes.

§ 57D-7-09: Reserved for future codification purposes.

§ 57D-7-10: Reserved for future codification purposes.

§ 57D-7-11: Reserved for future codification purposes.

§ 57D-7-12: Reserved for future codification purposes.

§ 57D-7-13: Reserved for future codification purposes.

§ 57D-7-14: Reserved for future codification purposes.

§ 57D-7-15: Reserved for future codification purposes.

§ 57D-7-16: Reserved for future codification purposes.

§ 57D-7-17: Reserved for future codification purposes.

§ 57D-7-18: Reserved for future codification purposes.

§ 57D-7-19: Reserved for future codification purposes.

## Part 2. Withdrawal.

### § 57D-7-20. Withdrawal of foreign LLC.

(a) A foreign LLC authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign LLC authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must state the following:

- (1) The name of the foreign LLC and if different the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) That the foreign LLC is not transacting business in this State and that it surrenders its authority to transact business in this State.

- (4) That the foreign LLC revokes the authority of its registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on such foreign LLC by service thereof on the Secretary of State.
  - (5) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (4) of this subsection.
  - (6) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in its mailing address.
- (c) If the Secretary of State finds that the application conforms to law, the Secretary of State shall do the following:
- (1) File the application for the certificate of withdrawal as provided in G.S. 55D-15.
  - (2) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application.
  - (3) Send to the foreign LLC or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.
- (d) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (b) of this section may be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of that process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall mail a copy of the process by registered or certified mail, return receipt requested, to the foreign LLC at the mailing address designated pursuant to subsection (b) of this section. (2013-157, s. 2.)

**§ 57D-7-21. Withdrawal of foreign LLC by reason of a merger, consolidation, or conversion; qualification of successor.**

(a) Whenever a foreign LLC authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or other reorganization permitted by the law of the jurisdiction under which it is organized, or converts into another type of entity as permitted by that law, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign LLC by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or other reorganization or conversion or a certificate reciting the facts of the merger, consolidation, or other reorganization or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the jurisdiction under the law of which the foreign LLC was organized. If the surviving or resulting entity is not authorized to transact business in this State, the application for the certificate of withdrawal must state, and therefore modify the information described below that otherwise is required to be provided under G.S. 57D-7-20(b) to the extent of conflict, the following:

- (1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The type of entity and name of the surviving or resulting entity.
- (4) That the surviving or resulting entity is not transacting business in this State and the foreign LLC surrenders its authority to transact business in this State.

- (5) That the surviving or resulting entity revokes the authority of the foreign LLC's registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on the surviving or resulting entity by service thereof on the Secretary of State.
- (6) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (5) of this subsection.
- (7) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in the surviving or resulting entity's mailing address.

(b) If the Secretary of State finds that the articles or certificate described in subsection (a) of this section relating to the merger, consolidation, or other reorganization or conversion and the application for the certificate of withdrawal conform to law, the Secretary of State shall do the following:

- (1) File the articles or certificate and the application for the certificate of withdrawal as provided in G.S. 55D-15.
- (2) Issue a certificate of withdrawal.
- (3) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (a) of this section is to be made by delivering to the Secretary of State or to any clerk authorized by the Secretary of State to accept service of process duplicate copies of process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section. (2013-157, s. 2.)

**§ 57D-7-22. Authority of Attorney General.**

The Attorney General may maintain an action to restrain a foreign LLC from transacting business in this State in violation of this Article. (2013-157, s. 2.)

**§ 57D-7-23:** Reserved for future codification purposes.

**§ 57D-7-24:** Reserved for future codification purposes.

**§ 57D-7-25:** Reserved for future codification purposes.

**§ 57D-7-26:** Reserved for future codification purposes.

**§ 57D-7-27:** Reserved for future codification purposes.

§ 57D-7-28: Reserved for future codification purposes.

§ 57D-7-29: Reserved for future codification purposes.

### Part 3. Revocation of Certificate of Authority.

#### § 57D-7-30. Grounds for revocation.

(a) The Secretary of State may commence a proceeding under G.S. 57D-7-31 to revoke the certificate of authority of a foreign LLC authorized to transact business in this State if any of the following occurs:

- (1) The foreign LLC is delinquent in delivering its annual report.
- (2) The foreign LLC does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter.
- (3) The foreign LLC is without a registered agent or registered office in this State for 60 days or more.
- (4) The foreign LLC does not inform the Secretary of State under G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance.
- (5) A company official or agent of the foreign LLC signed a document that the company official or agent knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of the records of the limited liability companies in the state or country under whose law the foreign LLC is organized stating that it has been dissolved or merged into another entity.
- (7) The foreign LLC is exceeding the authority conferred upon it by this Chapter.
- (8) The foreign LLC knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein repeals or modifies any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign LLCs for failure to comply with the provisions thereof. (2013-157, s. 2.)

#### § 57D-7-31. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one or more grounds exist under G.S. 57D-7-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign LLC written notice of that determination.

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign LLC.

(c) The authority of a foreign LLC to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign LLC's certificate of authority appoints the Secretary of State as the foreign LLC's agent for service of process in any proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign LLC was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55D-33.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the foreign LLC.

(f) The foreign LLC will not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the satisfaction of the Secretary of State. (2013-157, s. 2.)

**§ 57D-7-32. Appeal from revocation.**

(a) A foreign LLC may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign LLC by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. Copies of the foreign LLC's certificate of authority and the Secretary of State's certificate of revocation are to be attached to the petition. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court will be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign LLC will have the burden of establishing that it is entitled to have the revocation set aside.

(b) Upon consideration of the petition and any response made by the Secretary of State, the court may prior to entering final judgment order the Secretary of State to set aside the revocation or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings. (2013-157, s. 2.)

**§ 57D-7-33. Inapplicability of Administrative Procedure Act.**

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 57D-7-30 through G.S. 57D-7-32. (2013-157, s. 2.)