Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 198

SENATE BILL 1233

AN ACT

AMENDING SECTION 29-632, ARIZONA REVISED STATUTES; AMENDING TITLE 29, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 29-732.01; RELATING TO LIMITED LIABILITY COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 29-632, Arizona Revised Statutes, is amended to read:

29-632. Articles of organization

A. The articles of organization shall state:

1. The name of the limited liability company.

2. The name, street address in this state and signature of the agent for service of process required to be maintained by section 29-604.

3. The address of the LIMITED LIABILITY company's known place of business in this state, if different from the street address of the company's statutory agent.

4. The latest date, if any, on which the limited liability company must dissolve.

5. Either of the following statements:

(a) Management of the limited liability company is vested in a manager or managers.

(b) Management of the limited liability company is reserved to the members.

6. The name and address of either of the following:

(a) If management of the limited liability company is vested in a manager or managers, each person who is a manager of the limited liability company and each member who owns, EITHER SEPARATELY OR AS A CO-OWNER WITH OTHERS, a twenty per cent or greater interest in the capital or profits of the limited liability company.

(b) If management of the limited liability company is reserved to the members, each person who is a member of the limited liability company.

B. The articles of organization may include any other provision that is consistent with law, including any provisions under this chapter that are required or permitted to be set out in an operating agreement of the limited liability company.

C. It is not necessary to set out in the articles of organization any of the powers enumerated in this chapter.

Sec. 2. Title 29, chapter 4, article 6, Arizona Revised Statutes, is amended by adding section 29-732.01, to read:

29-732.01. Ownership of interest in limited liability company in joint tenancy or community property with right of survivorship

A. EXCEPT AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, AN INTEREST IN A LIMITED LIABILITY COMPANY MAY BE HELD BY TWO OR MORE NATURAL PERSONS AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED COUPLE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR IN AN OPERATING AGREEMENT, AN ASSIGNMENT OR ISSUANCE OF AN INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS CREATES A TENANCY IN COMMON, EXCEPT AN ASSIGNMENT OR ISSUANCE TO A MARRIED COUPLE.

B. A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP IS CREATED WHEN A WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT TWO OR MORE NATURAL PERSONS HOLD AN INTEREST IN A LIMITED LIABILITY COMPANY AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP. EXCEPT AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS, WHO MAY INCLUDE ONE OR MORE ASSIGNORS, OR BY THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF ORGANIZATION HAVE BEEN SIGNED BY EACH JOINT TENANT AND CONTAIN THE EXPRESS WRITTEN DECLARATION THAT THE JOINT TENANTS HOLD THE ASSIGNED INTEREST AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.

C. AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IS CREATED WHEN A WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT A MARRIED COUPLE HOLDS AN INTEREST IN A LIMITED LIABILITY COMPANY AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP. EXCEPT AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN INTEREST IN A LIMITED LIABILITY COMPANY TO A MARRIED COUPLE, WHO MAY INCLUDE ONE OR BOTH ASSIGNOR SPOUSES, OR BY THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF ORGANIZATION HAVE BEEN SIGNED BY EACH SPOUSE AND CONTAIN THE EXPRESS WRITTEN DECLARATION THAT THE MARRIED COUPLE HOLDS THE ASSIGNED INTEREST AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

D. ALL CO-OWNERS OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AS COMMUNITY PROPERTY OR AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP SHALL OWN AN EQUAL UNDIVIDED INTEREST IN THE INTEREST. EACH CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, SHALL HAVE ONLY THE RIGHTS OF AN ASSIGNEE WITH RESPECT TO THE INTEREST, BOTH DURING THE LIFETIME AND FOLLOWING THE DEATH OF ANY OTHER CO-OWNER, UNLESS AND UNTIL THE CO-OWNER IS ADMITTED AS A MEMBER IN ACCORDANCE WITH SECTION 29-731.

E. IF AN INTEREST IN A LIMITED LIABILITY COMPANY IS HELD BY TWO OR MORE PERSONS IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED COUPLE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A CO-OWNER OF THE INTEREST:

1. THE SURVIVING CO-OWNER OR CO-OWNERS OF THE INTEREST SHALL SUCCEED TO THE OWNERSHIP OF THE DECEDENT'S INTEREST IN THE LIMITED LIABILITY COMPANY WITHOUT FURTHER ACTION BY THE LIMITED LIABILITY COMPANY OR THE OTHER MEMBERS, AND SHALL HAVE ONLY THE RIGHTS OF AN ASSIGNEE WITH RESPECT TO THE INTEREST, UNLESS AND UNTIL THE CO-OWNER IS ADMITTED AS A MEMBER IN ACCORDANCE WITH SECTION 29-731.

2. THE INTEREST IN THE LIMITED LIABILITY COMPANY IN THE HANDS OF THE SURVIVING CO-OWNER OR CO-OWNERS SHALL CONTINUE TO BE SUBJECT TO ALL OBLIGATIONS AND LIABILITIES TO WHICH THAT INTEREST WAS SUBJECT IMMEDIATELY BEFORE THE DEATH UNDER THE TERMS OF THE OPERATING AGREEMENT OR OTHER AGREEMENT AMONG ONE OR MORE MEMBERS OR THIRD PARTIES.

3. IF THERE IS MORE THAN ONE SURVIVING CO-OWNER OF AN INTEREST HELD IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A CO-OWNER THE SURVIVING CO-OWNERS SHALL CONTINUE TO OWN THE INTEREST IN EQUAL SHARES AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP.

F. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT:

1. THE DISTRIBUTION, VOTING, APPROVAL AND OTHER MANAGEMENT RIGHTS WITH RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY THAT IS CO-OWNED BY TWO OR MORE PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, SHALL BE THE SAME AS IF THE INTEREST WERE HELD BY ONLY ONE PERSON.

2. EACH CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY WHO HAS BEEN ADMITTED AS A MEMBER MAY EXERCISE ALL VOTING, APPROVAL AND OTHER MANAGEMENT RIGHTS OF A MEMBER, INCLUDING THE RIGHT TO APPROVE AN AMENDMENT TO THE OPERATING AGREEMENT, WITH RESPECT TO AN INTEREST HELD AS TENANCY IN COMMON, JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

3. THE LIMITED LIABILITY COMPANY IS ENTITLED TO RELY IN GOOD FAITH ON THE ACT OF A MEMBER THAT PURPORTS TO BE TAKEN IN THE EXERCISE OF ANY VOTING, APPROVAL OR OTHER MANAGEMENT RIGHT, INCLUDING THE RIGHT TO APPROVE AN AMENDMENT TO THE OPERATING AGREEMENT RELATING TO AN INTEREST IN A LIMITED LIABILITY COMPANY THAT IS CO-OWNED BY THE MEMBER WITH ONE OR MORE OTHER PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

G. IF A CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP TRANSFERS PART OR ALL OF THE CO-OWNER'S SHARE OF THAT INTEREST, THE RIGHT OF SURVIVORSHIP IS EXTINGUISHED AND THE CO-OWNERS OF THE INTEREST AFTER THE TRANSFER HOLD THEIR SHARES OF THE INTEREST AS TENANTS IN COMMON, EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT. IN THE CASE OF COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, THE RIGHT OF SURVIVORSHIP IS ALSO EXTINGUISHED AS PROVIDED IN SECTION 14-2803 OR 14-2804 OR ON THE DELIVERY TO THE LIMITED LIABILITY COMPANY, AT THE ADDRESS OF ITS KNOWN PLACE OF BUSINESS IN THE RECORDS OF THE COMMISSION, OF AN AFFIDAVIT ENTITLED "AFFIDAVIT TERMINATING RIGHT OF SURVIVORSHIP" THAT IS EXECUTED BY EITHER SPOUSE UNDER OATH STATING THE SPOUSE'S INTENT TO TERMINATE THE RIGHT OF SURVIVORSHIP AND DESCRIBING THE AFFECTED INTEREST IN THE LIMITED LIABILITY COMPANY. THE DELIVERY OF THE AFFIDAVIT SHALL NOT EXTINGUISH THE COMMUNITY PROPERTY INTEREST OF EITHER SPOUSE.

H. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT, A LIMITED LIABILITY COMPANY DOES NOT NEED TO GIVE EFFECT TO ANY CREATION OR EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP UNTIL THE LIMITED LIABILITY COMPANY HAS RECEIVED WRITTEN NOTICE OF THE CHANGE IN THE FORM OF OWNERSHIP OR OF THE CREATION OR THE EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP AT THE ADDRESS OF ITS KNOWN PLACE OF BUSINESS IN THE RECORDS OF THE COMMISSION.

I. WITH RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY OWNED IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, TENANCY IN COMMON OR COMMUNITY PROPERTY WITH OR WITHOUT RIGHT OF SURVIVORSHIP, IF A CHARGING ORDER FROM A COURT OF COMPETENT JURISDICTION IS OBTAINED AGAINST A CO-OWNER'S SHARE OF THE INTEREST, IT SHALL ATTACH ONLY TO THAT CO-OWNER'S SHARE OR PORTION OF THE INTEREST AND NOT TO THE SHARE OR PORTION OF THE OTHER CO-OWNER OR CO-OWNERS.

APPROVED BY THE GOVERNOR MAY 7, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2013.

Passed the House April 18, 2013,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 25, 2013,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Charmin Bellington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

2 day of May, 2013,

at 11:22 o'clock A M.

Mikhaila Howard
Secretary to the Governor

Approved this 7th day of

May, 2013,

at 2:14 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 8th day of May, 2013,

at 9:01 o'clock a M.

Ken Bennett
Secretary of State

S.B. 1233