



Limited Liability Companies Forced into Compliance

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California limited liability companies and foreign limited liability companies (LLCs) registered in California must file a Statement of Information with the California Secretary of State within 90 days after the articles of organization or registration are filed, and biennially thereafter (Corp. Code §17060). For many years, the Secretary of State has made no effort to enforce this requirement with respect to LLCs. We have often noticed that some LLCs which have not filed a Statement of Information for years suffered no penalties from the Secretary of State.

This is no longer true. The Secretary of State's office has been checking its records and suspending LLCs not in compliance. Pursuant to Corp. Code §17654(a), an LLC that:

1. fails to file a Statement of Information for an applicable filing period,
2. has not filed a Statement of Information during the preceding 24 months, and
3. was certified for penalty to the Franchise Tax Board pursuant to Corp. Code §17653 for the same filing period, shall be subject to suspension.

When the three above-referenced conditions are met, the Secretary of State is required to notify the LLC that its powers, rights, and privileges will be suspended after 60 days if it fails to file a Statement of Information. After expiration of the 60-day period, if no Statement of Information is filed, the Secretary of State is required to notify the Franchise Tax Board of the suspension, and mail a notice of the suspension to the LLC; thereupon (except for amending the articles of organization to set forth a new name) the powers, rights, and privileges of the LLC will be suspended (Corp. Code §17654(b)).

Getting a suspended LLC back into good standing with the Secretary of State involves filing a current, complete Statement of Information with the Secretary of State. However, unlike corporations, LLCs cannot file a Statement of Information online – they must submit their Statement of Information by mail or via a

corporate filing service. It currently is taking the Secretary of State approximately four months to process the form when submitted by mail and to update its records. For example, in the case of a suspended LLC, if a good standing certificate is required quickly in order to close a transaction, a party may have no choice but to file the form through a corporate filing service, and to request 24-hour expedited handling from the Secretary of State. This means that a form that should cost \$20.00 to file will cost \$470.00.

The Secretary of State sends out postcard reminders three months before a Statement of Information is due. However, it is still the LLC's responsibility to timely file the form, even if the LLC does not receive a reminder postcard from the Secretary of State.

Many of our clients file their Statements of Information themselves. For others, we have reminders set up in our firm's docketing system. LLCs that may not be in compliance should check their records with the Secretary of State. The Secretary of State maintains a website which shows the status of all corporations and LLCs registered in the state.

How Nossaman Can Help

Attorneys in Nossaman's Corporate Practice Group can help you with any questions you may have or assistance you may need in connection with forming and maintaining LLCs in compliance with applicable state laws. Note that an LLC may not be the right corporate structure for your entity. Contact Nossaman's Corporate Practice Group attorneys to discuss the different corporate options available for your business.

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