

CORPORATE MATTERS: HELP - MY DELAWARE ENTITY HAS BEEN CANCELLED!

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Tags

Cancelled Entity
Certificate of Renewal
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Revival of Charter

We have received inquiries recently concerning Delaware entities that have been cancelled by the State. This situation is not as bad as it sounds, and after a few simple steps (and a couple of checks), the entity can be reinstated.

HOW DOES IT HAPPEN?

In Delaware, a corporation becomes “void” for failure to file its annual report. The entity becomes “forfeited” if its registered agent resigns and is not replaced. Registered agents typically resign if their annual fee is not paid in a timely manner. The registered agent is required to give 30 days’ notice of its intention to resign and will have forwarded to the address of record delinquency notices from the State with respect to unfiled reports.

The certificate of formation of a Delaware limited liability company will be cancelled if the entity fails to pay its annual franchise tax for three consecutive years,¹ or if it fails to replace its registered agent within 30 days.

Before a Delaware corporation becomes void or forfeited or a limited liability company has its certificate of formation cancelled, such entity first ceases to be in “good standing.” This occurs as soon as an entity fails to pay certain fees or to file annual reports. While in this status, an entity cannot make any filings with the State or sue in the courts of Delaware. It is also difficult to close any transaction where a good standing certificate is required. This situation may be cured by filing the outstanding reports and paying all outstanding franchise taxes.

REINSTATEMENT

A forfeited Delaware corporation may have its charter restored by filing a Certificate for Renewal and Revival of Charter pursuant to the Delaware General Corporation Law (the “Act”).² The certificate must include:

- The exact name of the corporation;
- The date of its incorporation under the laws of Delaware;
- The date the corporation was voided;
- The name and address of the corporation’s registered agent; and

¹ 6 Del C. §18-1108.

² 8 Del C. §312.

- Whether or not the renewal is perpetual.³

The filing fee for the certificate is \$169.00. Before it can be filed, all franchise taxes, penalties, and interest that were due to the State at the time the entity became void/forfeited must be paid and all applicable annual reports must be filed.

Upon filing of the certificate in accordance with the Act, the corporation will be renewed and revived with the same force and effect as if its certificate of incorporation had not been forfeited or void pursuant to the Act.⁴

With respect to a Delaware limited liability company, the terminology is slightly different, but similar mechanisms are provided to reinstate alternative entities that are cancelled for failure to pay annual taxes or keep a registered agent. To reinstate a Delaware limited liability company, a certificate of revival must be filed⁵ and, as with a corporation, all outstanding taxes and penalties must also be paid. The certificate of revival must include:

- The name of the limited liability company;
- The date of filing of its original certificate of formation;
- The address of the limited liability company's registered office in the State of Delaware and the name and address of the limited liability company's registered agent in the State of Delaware; and
- A statement that the certificate of revival is being filed by one or more authorized persons.

CONCLUSION

As can be seen from the timelines mentioned above, a Delaware entity has to be delinquent for an extended period of time before it will be cancelled by the State. Remembering to update local counsel and the entity's registered agent in Delaware along with any changes of address to ensure receipt of all notifications will help avoid cancellation altogether, but reinstatement after cancellation is a relatively straightforward process.



³ 8 Del C. §312(d).

⁴ 8 Del C. §312(e).

⁵ 6 Del C. §18-1109(a).