

§ 57D-1-32. Penalties imposed on limited liability companies for failure to answer interrogatories.

(a) In addition to the recourse that the Secretary of State may have under G.S. 57D-6-06 and Part 3 of Article 7 of this Chapter to administratively dissolve an LLC or revoke the certificate of authority of the foreign LLC, if a limited liability company 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, the Secretary of State may suspend its articles of organization or its certificate of authority to do business in this State. The Secretary of State shall immediately notify by mail the limited liability company of its suspension. The powers, privileges, and franchises conferred on the limited liability company by the articles of organization or the certificate of authority terminate upon their suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless and to the extent the Secretary of State reinstates the limited liability company.

(b) The Secretary of State shall reinstate a limited liability company upon the limited liability company fully complying with its obligations under G.S. 57D-1-31, paying all State taxes, fees, and penalties due from it (which total amount due may be computed, for years before and after the suspension, in the same manner as if the suspension had not taken place) and paying to the Secretary of State twenty-five dollars (\$25.00) to cover the cost of reinstatement. Upon reinstatement of an LLC's articles of organization or a foreign LLC's certificate of authority by the Secretary of State, (i) the limited liability company may again exercise its rights, privileges, and franchises in this State, and (ii) the Secretary of State shall make the appropriate entry thereof on the records of the Secretary of State. The entry of reinstatement in the records of the Secretary of State relates back to and takes effect as of the date of the suspension by the Secretary of State, and the limited liability company may resume conducting its business as if the suspension had never occurred, subject to the rights of any person who relied, to that person's prejudice, on the suspension. The Secretary of State shall immediately notify by mail the limited liability company of the reinstatement.

(c) When the articles of organization or certificate of authority of a limited liability company have or has been suspended by the Secretary of State under subsection (a) of this section and the limited liability company has ceased to operate as a going concern, if there remains property held in the name of the limited liability company that is not disposed at the time of the suspension, or there remain future interests that may accrue to the limited liability company, its successor, or its interest owners, then any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all interest owners are made parties. The applicant may serve persons whom the applicant either is unable to locate or are unknown by publication made in the same manner as the publication of notice under G.S. 57D-6-11. A guardian ad litem may be appointed for any interest owners who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set will be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the limited liability company on such terms and in such manner as the court may order, (ii) apply the proceeds to the payments of any debt of the limited liability company, and (iii) distribute the remainder among the interest owners in accordance with the manner in which liquidating distributions are to be made by the limited liability company. Amounts due to any interest owner who is unknown or whose whereabouts are unknown are to be paid to the office of the clerk of the superior court and disbursed according to law. If the records of the limited liability company are lost or do not reflect the owners of the property

interests, the court shall determine the owners from the best evidence available, and the receiver will be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the limited liability company by payment of its debts and by the transfer to its interest owners, or their representatives, of their shares of the limited liability company's remaining assets.

(d) Each manager or other company official of a limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager or other company official by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor. (2013-157, s. 2.)