

TROUBLED ENTITIES

GEORGE W. COLEMAN
2626 Cole Avenue, Suite 400
Dallas, TX 75204
(214) 303-1501
fax (214) 559-4555
gwcoleman@sbcglobal.net

State Bar of Texas
CHOICE OF ENTITY IN TROUBLED TIMES
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CHAPTER 6.1

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State Bar of Texas
CONTINUING LEGAL EDUCATION

Troubled Entities

Winding Up and Liquidation or Receivership

Presented By:
George W. Coleman
2626 Cole Avenue, Suite 400
Dallas, TX 75204
(214) 303-1501; (214) 559-4555 Fax
gwcoleman@sbcglobal.net

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Winding Up and Termination

- **Winding Up and Termination Under**
 - TBCA Parts 6 & 7
 - TLLCA (1528n Part 6)
 - Limited Partnerships (61329-1)
 - BOC
- **Issues**
 - When is it over? – Is it terminated?
 - Have all assets been sold?
 - Have all liabilities been satisfied or barred?
 - May I do just one more deal?

Winding Up and Termination Under BOC

- **Definitions – New**
 - “Event requiring a winding up” – an event specified by BOCA § 11.051
 - “Terminated entity” – a domestic entity the existence of which has been (A) terminated *** unless the entity has been reinstated in the manner provide by this code; or (B) forfeited pursuant to the Tax Code, unless forfeiture has been set aside.
 - “Winding Up” – the process of winding up the business and affairs of a domestic entity as a result of the occurrence of an event requiring winding up.

**Winding Up and Termination Under BOC
(Cont.)**

- “Voluntary winding up” – winding up as a result of a voluntary decision to wind up.
- “Voluntary decision to wind up” – winding up by vote of authorized persons.
- **Events Requiring Winding Up**
 - Five events plus special events for corporations, partnerships and LLCs.
BOC §§ 11.051, 11.056, 11.057, 11.058

**Winding Up and Termination Under BOC
(Cont.)**

- **The 5 events (BOC § 11.051) are:**
 - ❑ expiration of duration,
 - ❑ voluntary decision,
 - ❑ occurrence of event provided for in governing documents requiring winding up,
 - ❑ event specified in code, or
 - ❑ judicial decree.
- **LLC Supplemental Event (BOC § 11.056).**
Termination of last remaining member unless not later than 90 days after event, the legal representative, or successor agrees to continue and become a member effective as of the date of termination.

**Winding Up and Termination Under BOC
(Cont.)**

- **Limited Partnership Supplemental Events.** In addition to any event specified in Section 11.051, the following event requires winding up:
 - ❑ written consent of all partners to the winding up and termination of the limited partnership; and
 - ❑ an event of withdrawal of a general partner.

**Winding Up and Termination Under BOC
(Cont.)**

- Corporation Supplemental Provisions (BOC § 11.059). The winding up event must be specified in the certificate of formation or in the bylaws.
- Winding Up Procedure
 - Unless the event is revoked (BOC § 11.151) or cancelled (BOC § 11.152), the persons governing shall as soon as reasonably practicable, wind up the business and affairs of the domestic entity. See BOC § 11.052.

**Winding Up and Termination Under BOC
(Cont.)**

- Upon occurrence of the event requiring winding up, the entity shall cease to:
 - ❑ carry on its business, except to winding up;
 - ❑ send notice to each claimant (except for partnerships);
 - ❑ collect and sell its property; and
 - ❑ perform other acts required
- An entity in winding up may continue its business for the period necessary to avoid unreasonable loss of business. BOC § 11.054

**Winding Up and Termination Under BOC
(Cont.)**

- The entity must apply its property to discharge or make adequate provision for the discharge of all of its liabilities and obligations. BOC § 11.053(a)
- If the property is not sufficient to discharge all of the liabilities, the property shall be applied, to extent possible, to the just and equitable discharge of its liabilities and obligations. BOC § 11.053(b)

**Winding Up and Termination Under BOC
(Cont.)**

- **Termination of Claims**
 - **BOC §§ 11.351 through 11.359 provide for resolution of claims on termination, including the ability to:**
 - deposit with Comptroller amounts due to unknown or not located owners or creditors. BOC § 11.352; such deposit discharges depositor from liability to owner or creditor but only to extent of money received.
 - **Any claim against a terminated entity is extinguished on third anniversary of date of termination if no action is brought. BOC § 11.359**

**Winding Up and Termination Under BOC
(Cont.)**

- **A claim against a terminated entity may be extinguished on an accelerated basis using notice procedure under BOC § 11.358**
 - If creditor fails to properly present the claim in writing under BOC §§ 11.358(c) and (d); or
 - if creditor fails to bring an action on a rejected claim under BOC § 11.358(e) before the earlier of
 - 180th day after date of mailing of notice of rejecting claim; or
 - the 3rd anniversary of the effective date of the entity's termination.

See BOC § 11.359

**Winding Up and Termination Under BOC
(Cont.)**

- **Certificate of Termination**
 - **The BOC requires that a certificate of termination be filed for a filing entity with the SOS to terminate the existence of the entity. The certificate is filed at the time of the entity if fully liquidated. BOC § 11.101 The filing entity is terminated upon the filing of the certificate of terminate with the filing officer.**

**Winding Up and Termination Under BOC
(Cont.)**

- A filing entity continues in existence for 3 years for the purpose of defending lawsuits and conveying property. BOC § 11.356
- Note, that BOC § 11.356 provides that if a claim is brought before the expiration of the 3 year period after the date of the entity's termination and the claim was not extinguished under BOC § 11.359, the terminated entity continues to survive for purposes of defending or prosecuting the claim.

**Winding Up and Termination Under BOC
(Cont.)**

- Revocation and Cancellation of Events
 - The BOC provides that a domestic entity may revoke a voluntary decision to wind up before termination and may cancel the event requiring winding up (an event specified in the governing documents or an event specified in the BOC requiring a winding up) (See BOC §§ 11.151 and 11.152). Compare with TLLCA Art. 6.01

**Winding Up and Termination Under BOC
(Cont.)**

- Special limited partnership provisions (BOC § 153.501)
 - partners may cancel certain events requiring winding up within 90 days after the event
- Special general partnership provisions (BOC § 152.709)
 - partners may continue business of partnership in certain circumstances

Winding Up and Termination Under BOC (Cont.)

- If an entity goes into a state of winding up, its power may be limited for the period it is winding up.
- BOC § 11.151(b) provides that “A domestic entity may continue its business following the revocation of a voluntary decision to wind up under Subsection (a).” In addition, BOC § 11.152(c) provides that “On cancellation of an event requiring winding up under this section, the domestic entity may continue its business.”

Winding Up and Termination Under BOC (Cont.)

- Keep in mind that under BOC § 11.052(a) when an event requiring a winding up occurs the domestic entity shall “(1) cease to carry on its business, except to the extent necessary to wind up its business.” The impact is that the decision to cancel or revoke an event should occur more promptly than not.

Winding Up and Termination Under BOC (Cont.)

- **Liability Issues of Shareholders, Members, Partners, Directors and Manager on Liquidating Distributions**
 - **Shareholder in corporate setting**
 - BOC § 21.303 – (b) “Unless the distribution is made in compliance with Chapter 11, a corporation may not make a distribution: (1) if the corporation would be insolvent after the distribution; *** ”
 - BOC § 21.316 – (a) reads in part “the directors *** who vote for *** a distribution by the corporation that is prohibited by § 21.303 are jointly and severally liable to the corporation for the amount by which the distribution exceeds the amount permitted ***.”

Winding Up and Termination Under BOC (Cont.)

- ❑ BOC § 21.318 – provides that a director held liable for a claim under § 21.316 is entitled to receive contributions from shareholders who accept or receive wrongful distributions knowing that it was prohibited by § 21.303. The section also provides that the liability of a shareholder under is the only liability of a shareholder to the corporation.
- ❑ BOC provides that these provisions do not limit any liability imposed under Chapter 24, Business and Commerce Code or the US Bankruptcy Code.

Winding Up and Termination Under BOC (Cont.)

- **Member in LLC setting:**
 - ❑ BOC Sec. 101.206 – “(a) A [llc] may not make a distribution to a member *** if, immediately after making the distribution, the company’s total liabilities, other than liabilities described in Subsection (b), exceed the fair value of the company’s total assets.
 - ❑ “(d) A member *** who receives a distribution from the company in violation of this section is required to return the distribution to the company if the member had knowledge of the violation.”
 - ❑ “(e) This section may not be construed to affect the obligation of a member of a [llc] to return a distribution to the company under the company agreement or other state or federal law.”

Winding Up and Termination Under BOC (Cont.)

- **Partner in LP Setting:**
 - ❑ BOC Sec. 153.210 – “A limited partnership may not make a distribution to a partner if, immediately after giving effect to the distribution and despite any compromise of a claim *** all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and ***, exceed the fair value of the partnership assets.”

**Winding Up and Termination Under BOC
(Cont.)**

- Business and Commerce Code, Chapter 24, Uniform Fraudulent Transfer Act
 - Sec. 24.003 "Insolvency" – "(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.
(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

**Winding Up and Termination Under BOC
(Cont.)**

- Sec. 24.005 – "(a) a transfer made *** by a debtor is fraudulent as to a creditor, *** if the debtor made the transfer ***: (1) with actual intent to hinder, delay, or defraud any creditor ***, or (2) without receiving a reasonably equivalent value in exchange for the transfer ***, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;"

**Winding Up and Termination Under BOC
(Cont.)**

- Sec. 24.006 – "(a) A transfer made *** is fraudulent as to a creditor whose claim arose before the transfer was made *** if the debtor made the transfer *** without receiving a reasonably equivalent value in exchange for the transfer *** and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer."

**Winding Up and Termination Under BOC
(Cont.)**

- Sec. 24.008 – “(a) In an action *** a creditor, subject to the limitation in Sec. 24.009 of this Code,” may obtain:
- (1) avoidance of the transfer *** to the extent necessary to satisfy the creditor’s claims;
- (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the applicable TRCP and the Civil Practice and Remedies Code;
- (3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure: an injunction, a receiver, or any other relief that circumstances may require.

**Winding Up Business Entities
Checklist**

TBCA/TLLCA/TRLPA

- ✓ Lists of Assets and Lists of Liabilities
- ✓ Resolutions of Board of Directors of Dissolving Entity
- ✓ [Limited Partnership – Resolutions adopted by Board of Directors of General Partner]

BOC

- ✓ Lists of Assets and Lists of Liabilities
- ✓ Resolutions of Board of Directors of Winding Up Entity
- ✓ [Limited Partnership – Resolutions adopted by Board of Directors of General Partner]

**Winding Up Business Entities
Checklist (cont.)**

TBCA/TLLCA/TRLPA

- ✓ Resolutions of Shareholders
- ✓ [Consent of all Partners to Dissolve]
- ✓ Notice of Intent to Dissolve [Not applicable to Limited Partnership]
- ✓ Certificate of Mailing of Notice of Intent to Dissolve

BOC

- ✓ Resolutions of Shareholders
- ✓ [Consent of all Partners to Wind Up]
- ✓ Notice of Winding Up [Not applicable to Limited Partnership]
- ✓ Certificate of Mailing of Notice of Winding Up

Winding Up Business Entities
Checklist (cont.)

<u>TBCA/TLLCA/TRLPA</u>	<u>BOC</u>
✓ Pricing of assets and sale	✓ Pricing of assets and sale
✓ Assignment and Assumption Agreement	✓ Assignment and Assumption Agreement
✓ Liability Payment Schedule	✓ Liability Payment Schedule
✓ Distribution of Remaining Assets to Shareholders and Receipt of Distribution	✓ Distribution of Remaining Assets to Shareholders and Receipt of Distribution

Winding Up Business Entities
Checklist (cont.)

<u>TBCA/TLLCA/TRLPA</u>	<u>BOC</u>
✓ Articles of Dissolution (filed with SOS)	✓ Certificate of Termination (filed with SOS) (includes Limited Partnerships)
✓ [Certificate of Cancellation filed with SOS for Limited Partnership in accordance with Section 2.03 TRLPA]	
✓ Certificate of Dissolution (Issued by SOS)	

Winding Up Business Entities
Checklist (cont.)

<u>TBCA/TLLCA/TRLPA</u>	<u>BOC</u>
✓ [Limited Partnership assets distributed in accordance with Sec. 8.05 of TRLPA]	✓ [Limited Partnership assets distributed in accordance with Sec. 153.504 of BOC]
✓ Certificate (for IRS Form 966 Filing)	✓ Certificate (for IRS Form 966 Filing)
✓ Certificate of Comptroller as to payment of all taxes	✓ Certificate of Comptroller as to payment of all taxes

Receivership Under BOC

- Appointment – receiver: BOC § § 11.401 through 11.414
 - Receiver - domestic entity - only as provided for in the code. BOC § 11.401
- Jurisdiction to Appoint – receiver: BOC § 11.402
 - Court with jurisdiction over property of domestic or foreign entity (located in state & involved in litigation) has jurisdiction to appoint. BOC § 11.402
 - District Court in county of registered agent or principal place of business has jurisdiction to 1) appoint receiver for property and business of domestic for rehabilitating entity; or 2) order liquidation and appoint receiver. BOC § 11.402

**Receivership Under BOC
(Cont.)**

- Appointment over specific property: BOC § 11.403
 - Person having a probable right or interest in any property or interest in proceeds may ask Court having jurisdiction over specific property of a domestic or foreign entity to appoint a receiver in an action:
 - ❑ 1. by vendor to vacate a fraudulent purchase of property;
 - ❑ 2. by creditor to subject property or fund to creditor's claim;
 - ❑ 3. between partners or others jointly owning property;

**Receivership Under BOC
(Cont.)**

- ❑ 4. by mortgagee of property for foreclosure of mortgage and sale; when
 - If mortgaged property in danger of being lost, removed or injured;
 - If mortgage is in default and property is insufficient to discharge debt;
- ❑ 5. by receivers previously appointed.

**Receivership Under BOC
(Cont.)**

- **Appointment only if:**
 - ❑ 1. if property subject to 1,2,3, is about to be lost, removed or materially injured;
 - ❑ 2. appointment necessary to conserve property or fund and avoid damage to interest parties;
 - ❑ 3. all other requirements of law are complied with; and
 - ❑ 4. other available remedies are inadequate.
- **Appointment terminates if conditions change and danger is over.**

**Receivership Under BOC
(Cont.)**

- **Appointment to Rehabilitate Domestic Entity: BOC § 11.404**
- **Court may appoint receiver for entity's property and business if:**
 - ❑ 1. in an action by member or owner it is determined that:
 - A. entity is insolvent or in imminent danger of insolvency;
 - B. governing persons are deadlocked in management, members or owners unable to break deadlock and irreparable injury to entity has been or is about to be suffered;

**Receivership Under BOC
(Cont.)**

- C. actions of governing persons are illegal, oppressive or fraudulent;
- D. property is being misapplied or wasted;
- E. the shareholders are deadlocked in voting and have failed for at least two years to elect successors to govern;

**Receivership Under BOC
(Cont.)**

- 2. action by creditor it is determined that:
 - A. entity is insolvent, the claim has been reduced to judgment, and execution on judgment has been returned unsatisfied; or
 - B. entity is insolvent and has admitted in writing that claim is due and owing; or
- 3. in an action other than in 1 or 2, where courts of equity have traditionally appointed a receiver.
- **Court may appoint receiver in limited circumstances, see list in § 11.404.**

**Receivership Under BOC
(Cont.)**

- **Appointment to Liquidate Domestic Entity: BOC § 11.405**
- **Court may order liquidation of property and business of a domestic entity:**
 - 1. in an action by attorney general to terminate entity;
 - 2. on application of entity to have liquidation continued under court order;
 - 3. entity in receivership and court finds that plan presented before first year anniversary is not feasible for remedying the condition;

**Receivership Under BOC
(Cont.)**

- 4. application of creditor if it is established that irreparable damage will ensure to unsecured creditor unless there is an immediate liquidation;
- 5. on application of a member or director of a nonprofit.
- **Court may order liquidation if circumstances demand liquidation to avoid damage; court determines other remedies are inadequate.**

**Receivership Under BOC
(Cont.)**

- **Court-Ordered Filing of Claims: BOC § 11.407**
 - Court may require all claimants to file with clerk or receiver proof of claims under oath.
 - Court that so orders shall:
 - 1. set date, not earlier than 4 months as last day for filing; and
 - 2. prescribe notice to be given to claimants.

**Receivership Under BOC
(Cont.)**

- Court may extend filing deadline;
- Court may bar a claimant who fails to file a proof of claim during period unless claimant has a justifiable excuse for delay. A court may not order or effect a discharge of a claim of the claimant described by this subsection.

**Receivership Under BOC
(Cont.)**

- **Decree of Involuntary Termination: BOC § 11.412**
 - In a liquidation action, the Court shall enter a decree terminating the entity:
 - 1. when the costs and expenses of the action and all obligations and liabilities have been paid and discharged or adequately provided for and all remaining property has been distributed to owners; or
 - 2. if the property is not sufficient to discharge the costs and expenses of the action and all obligations and liabilities of the entity, when all the property has been applied toward their payment.

Corporate – TBCA – Parts 6 & 7

- **Voluntary Dissolution: Art. 6.02 and 6.03**
 - **Two options:**
 - ❑ Shareholder action – written consent signed by all shareholders. Art. 6.02
 - ❑ Voluntary dissolution by act of corporation. Art. 6.03
 - Board approves dissolution and directs shareholder on dissolution question
 - Approval: 2/3 of outstanding shares, plus 2/3 of each class (having right to approve) must approve

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Winding Up - After approval of dissolution:**
 - Must cease carrying on business, except to wind up. Art. 6.04A(1)
 - By registered or certified mail, Company must send written notice to each known claimant of intention to dissolve. Art. 6.04A(2)
 - Directors manage winding up process. Art. 6.04A

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Process. Art. 6.04A(3)**
 - ❑ Collect assets, dispose of property not going to shareholders.
 - ❑ Satisfy or make adequate provision for all liabilities
 - If assets not adequate, apply assets “to the just and equitable payment” of all liabilities. Art. 6.04A(3)
 - ❑ Remaining properties, if any, distributed in kind to shareholders.

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- ❑ May apply for court supervision during process. Art. 6.04A(4)
- ❑ Corporation may delay wind up to avoid unreasonable loss
- **Question – Is there a delay in winding up or is the business being continued without authority?**

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Discharge by liability deposit with Comptroller: Art. 7.11**
 - Used when amounts due to lost or unknown equity owners or creditors
 - Used when a creditor or shareholder is unknown or cannot be found
 - ❑ Must exercise reasonable diligence

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- Assets to be distributed, reduced to cash.
- File statement giving name, last known address, amount of the shares and other information comptroller may require.
- Comptroller issues receipt.
- Persons depositing released from liability to extent of funds deposited.

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Article of Dissolution – filing Articles: Art. 6.07**
 - If (1) voluntary proceeding not revoked, (2) all debts and liabilities are paid, discharged or satisfied, (3) when all assets have been applied “to the just and equitable payment of debts, liabilities and obligations,” or (4) when adequate provision has been made – Articles of Dissolution are executed and filed in SOS office.

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Articles of Dissolution - statutory requirements, including confirmation of payment or a statement of insufficiency of assets and assets have been applied as far as they will go**
- **Filing**
 - ❑ Original and copy to Secretary of State
 - ❑ Certificate from Comptroller of Public Accounts that all taxes have been paid
 - ❑ Filing Fee

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Secretary of State will:**
 - ❑ Endorse “filed” on original and copy and date
 - ❑ File original in office
 - ❑ Issue a certificate of dissolution having attached copy of articles of dissolution
- **Corporate existence terminates upon issuance of certificate Art. 6.07**

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Limited Survival After Dissolution: Art. 7.12**
 - **Limited corporate existence continues for three years after termination.**
 - **Limited existence purposes:**
 - ❑ Prosecuting or defending any action or proceeding
 - ❑ Permitting survival of existing claim by or against corp.
 - ❑ Holding title to and liquidating properties or assets or collecting after dissolution properties or assets
 - ❑ Settling any other assets
 - ❑ But may not carry on ordinary business

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Directors at time of termination (issuance of certificate of dissolution) or the majority of them then living, shall continue to have authority to wind up.**
- **Claims:**
 - ❑ Only liable for existing claims
 - ❑ Existing claim is extinguished at end of 3 year period
 - ❑ Corporate existence continues during pendency of claim if action is brought on existing claim before 3 years
 - ❑ Trust fund theory permits creditors to follow asset until running of SOL

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Forced Presentation of Claims.**
 - ❑ A dissolved corporation may send written notice to last known address of claimant demanding that claimant present its claim in accordance with terms of notice:
 - ❑ Notice must state:
 - That claimant's claim must be present to dissolved corp. on or before date in notice (not less than 120 days after date of notice).
 - State that written presentation of claim must describe claim in reasonable detail to permit identity of claim to be determined.

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- ❑ State mailing address where claim may be sent
- ❑ State that claim will be extinguished if not received by date
- ❑ Accompanied by copy of Section D, Art. 7.12
- ❑ If claim is sent in, it may be rejected by dissolved corporation
 - Rejection notice must state that claim will terminate if action is not brought within 180 days after date of rejection notice

**Corporate – TBCA – Parts 6 & 7
(cont.)**

- **Revocation of Voluntary Dissolution Proceedings. Art. 6.05**
 - ❑ Prior to issuance of certificate of dissolution or within 120 days after issuance, a voluntary dissolution proceeding may be revoked (i) by written consent of all shareholders; (ii) by directors adopting resolution and approval of 2/3 of shares outstanding and the filing of articles of revocation of dissolution.

LLCs – TLLCA (1528n Part 6)

- **Dissolution – Causes: Art. 6.01**
 - **LLC dissolves on first to occur:**
 - ❑ Period fixed for duration of LLC expires;
 - ❑ Occurrence of events specified in articles or organization or regulations to cause dissolution;
 - ❑ Action of members to dissolve;
 - ❑ LLCs with no members, no capital has been paid in, and LLC has not commenced business, the act of a majority of managers (named in articles) to dissolve as provided in Sec. G of Article 2.23;

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- Except as provided in regulations, termination of the continued membership of the last remaining member; or
- Entry of decree of judicial dissolution under Art 6.02.
- **Continuation of Business – Revocation of Voluntary Dissolution**
 - **One remaining member prevents LLC dissolution when period expires or the period or the occurrence of an event specified, if the business is continued by vote of the members or class as provided in the articles or regulations or if not stated, by all remaining members.**

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- Unless otherwise provided in articles or regulations, election to continue must be made within 90 days after date of the occurrence of an event of dissolution.
- If election to continue is made after occurrence of event or expiration of period, election is not effective unless an appropriate amendment is made during three year period following the event of dissolution, extending the period or deleting the event specified.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- No dissolution occurs on termination of membership of last remaining member, if legal representative or successor agrees to continue LLC and become a member as of date of termination of last remaining member's membership or designates another person who agrees to become a member as of date of termination. Representative or successor must make election within 90 days after event.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- ❑ Before issuance of certificate of dissolution, or not later than 120 days after date certificate, LLC may revoke voluntary dissolution proceedings by written consent of all members.
 - If certificate has been issued, LLC may revoke voluntary dissolution by delivering to the SOS articles of revocation.
 - If articles conform to law, and appropriate fee is paid, SOS issues a certificate of revocation with copy of the articles of revocation.
- ❑ Upon issuance of certificate of revocation, LLC may conduct business.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- Winding Up
 - On dissolution, the affairs must be wound up as soon as reasonably practicable.
 - Mangers or members or other person designated by the articles or regulations or by resolution of the managers or members conduct winding up.
 - In case of termination of membership of last remaining member, winding up shall be accomplished by legal rep or successor of the last remaining or a person designated by the legal rep or successor.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- Procedure Before Filing Article of Dissolution: Art. 6.05
 - Before filing articles of dissolution:
 - ❑ LLC ceases to carry on business, except necessary for winding up.
 - ❑ LLC must send written notice by registered or certified mail of intention to each known creditor and claimant against LLC.
 - ❑ LLC proceeds to collect assets, convey and dispose of properties, satisfy or discharge liabilities and obligations OR make adequate provision for discharge thereof, and do all acts necessary to liquidate its business.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- ❑ LLC must apply assets to discharge liabilities; if assets not sufficient LLC applies assets to the "just and equitable payment of the liabilities."
- ❑ After paying or making adequate provisions for payment, LLC then distributes remaining assets, in cash or kind, to members.
- ❑ During liquidation LLC may apply to court to have liquidation continued under court supervision.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- **Articles of Dissolution**
 - Articles of Dissolution filed with SOS after assets collected, liabilities paid or adequate provision is made or property has been applied so far as it will go to the just and equitable payment of liabilities, then remaining assets, if any, are distributed.
 - SOS will issue Certificate of Dissolution with a copy of Articles of Dissolution attached.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- ❑ Upon issuance of Certificate of Dissolution, the existence of the LLC ceases, except for the purpose of suits, other proceedings or dealing with property.
- **Application of Other Statutes**
 - Part Seven of the TBCA applies to an LLC.
 - TBCA Art. 7.12, Limited Survival After Dissolution, is applicable to the same effect that it is applicable to a corporation.

**LLCs – TLLCA (1528n Part 6)
(Cont.)**

- Note - Art. 7.12 contains a specific 3 year period of survival, which is extended if a claim is being litigated. Art. 7.12 also contains provisions permitting shortening of SOL. See Slide 13. The 7.12 language is somewhat in conflict with the language of TLLCA Art. 6.08 which does not contain the specific 3 year period.
- TBCA Art. 7.11, Deposit with Comptroller, is applicable to LLC.

**Limited Partnerships –
TRLPA (6132a-1)**

- Dissolution – Causes: Art. 8.01
 - LP dissolves and must be wound up only upon first to occur:
 - ❑ Occurrence of events specified in partnership agreement to cause dissolution unless within 90 days after event, all remaining partners (or a group or percentage of partners specified in agreement) agree in writing to continue business;
 - ❑ Written consent of all partners to dissolution;

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- ❑ Event of withdrawal of general partner, unless
 - One gp remains and agreement permits business to be carried on by remaining gp or gps and that gp or others do so; or
 - Within 90 days after event, all remaining partners (or another group or percentage of partners specified in agreement) agree in writing to continue business and, they may or if no gp remains, agree to appoint, effective as of date of withdrawal, one or more gps.
- ❑ Entry of a decree of judicial dissolution under Sec 8.02 of the TRLPA.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- **Winding Up: Art. 8.04**
 - **Except as provided in agreement, on dissolution**
 - ❑ the partnership's affairs shall be wound up as soon as reasonably practicable, and
 - ❑ winding up shall be accomplished by the gps, who did not wrongfully dissolve, or,
 - if none who did not wrongfully dissolve, by the lps or person chosen by lps.
 - ❑ A court may wind up on application of any partner or partner's legal rep or assignee and, in connection with winding up, may appoint a person to wind.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- ❑ Unless a written agreement provides otherwise, the person winding up has the power, on behalf of the partnership, to:
 - Prosecute and defend civil, criminal, or administrative suits;
 - Settle and close the business;
 - Dispose of and convey partnership property for cash, unless the agreement permits a transfer on noncash terms;
 - Discharge or make reasonable provision to pay liabilities; or
 - Distribute to the partners remaining assets.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- **A limited partner winding up does not take on additional liability by acting as liquidator.**
- **Disposition of Assets (Sec. 8.05)**
 - **On winding up, the assets shall be paid or transferred as follows:**
 - ❑ To creditors in satisfaction of liabilities;
 - ❑ Unless otherwise provided by the agreement, to partners and former partners in satisfaction of liability for distributions under Sec. 6.01 or payments under Sec 6.04;
 - ❑ Unless otherwise provided by the agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Sec. 5.04.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- **Certificate of Cancellation (Sec. 2.03)**
 - The SOS regards a limited partnership as continuing in existence until a certificate of cancellation is filed.
 - A certificate of limited partnership must be canceled by filing a certificate of cancellation with the SOS (i) on completion of winding up; (ii) when there are no limited partners; or (iii) on a merger or conversion.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- **Revocation of Voluntary Cancellation (Sec. 2.03-A)**
 - A certificate of cancellation may be revoked within 120 days after filing with the written consent of all partners provided that the agreement does not prohibit such action.
 - To effect a revocation, a certificate of revocation of cancellation must be filed in the SOS within 120 days after the date the certificate of cancellation is issued.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- Upon filing a certificate of revocation of cancellation, the partnership may:
 - ❑ Be reconstitute for purposes of continuing its business; or
 - ❑ If the business is not to be continued, complete the process of winding up the partnership affairs.
- **Filing – Sec. 2.07**
 - Any document filed with the SOS under Art. 6132a-1 is effective upon filing with the SOS, except for documents designating a future date upon which to become effective.

**Limited Partnerships –
TRLPA (6132a-1) (Cont.)**

- **Claiming**
 - **General Partner of a limited partner has liability for claims and obligations of limited partnership.**
 - **Limited Partners, unless negated in agreement, may have liability to partnership to pay back to partnership an amount equal to the limited partner's capital account.**
 - **TRLP does not contain a provision permitting continuation of partnership for limited purpose after termination of certificate.**
